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ELECTION COMMISSION OF INDIA

NOTIFICATION

New Delhi, the 23rd December 1955

S.R.O. 39.—Whereas the election of (1) Dr. Brijendra Swarup, (2) Dr. Ishwari Prasad and (3) Shri Beni Prasad Tandon, as members of the Legislative Council of the State of Uttar Pradesh from the Uttar Pradesh Graduates West Constituency of that Council, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Sri Ratan Shukla, son of Pt. Shambhu Ratan Shukla, resident of 15/91, Civil Lines, Kanpur;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said election petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, LUCKNOW

PRESENT: Sri Raghunandan Saran (Retired District Judge)—*Chairman.*

Sri M. U. Faruqi (Retired District Judge)—*Judicial Member.*

Sri A. Sanyal—*Advocate Member.*

ELECTION PETITION No. 330 OF 1952

Petition under sections 80 and 81 of the Representation of the People Act, 1951.

Election to Uttar Pradesh Legislative Council from U. P. Graduates Constituency (West).

Sri Shri Ratan Shukla son of Pt. Shambhu Ratan Shukla, resident of 15/19, Civil Lines, Kanpur—*Petitioner.*

Versus

1. Dr. Brijendra Swarup Advocate, Civil Lines, Kanpur;

2. Dr. Ishwari Prasad, Professor, Allahabad University, Allahabad;

3. Sri Beni Prasad Tandon, Rani Mandi, Allahabad;

4. Sri Babu Lal Vaish, Ram Bhawan, Baghpat Road, Meerut;

5. Shri Prabhat Misra, Daraganj, Allahabad;

6. Sri Virendra Swarup, Civil Lines, Kanpur;

7. Sri Saraswati Prasad, Agra Province Zamindars Association, Allahabad.

8. Sri R. C. Bhargava, Principal, Muttra;

9. Sri Girdhar Gopal, Advocate, Etah;

10. Sri Sharda Prasad Saxena, Professor, D.A.V. College, Kanpur—*Respondents.*

JUDGMENT

PER R. SARAN AND M. U. FARUQI

1. This is a petition under Sections 80 and 81 of the Representation of the People Act, 1951, challenging the election to the Uttar Pradesh Legislative Council from the U.P. Graduates (West) Constituency held in March and April 1952. Three candidates were to be returned and the election was conducted on the system of the single transferable vote and the voting was by postal ballot. The petitioner and the respondents Nos. 1 to 10 were the duly nominated candidates at this election, and out of them the respondents No. 1 to 3 were returned. The respondent No. 1 is Dr. Brijendra Swarup, the well-known octagenerian Advocate and educationalist of Kanpur, and one of his sons is Sri Virendra Swarup respondent No. 6; the respondent No. 2 is Dr. Ishwari Prasad, the well-known historian who was then a Professor in the Allahabad University, and the respondent No. 3 is Sri Beni Prasad Tandon of Allahabad. The petitioner is Sri Shri Ratan Shukla who, too is an Advocate of Kanpur. The election petition was presented in August, 1952 and it remained pending before the Faizabad Election Tribunal upto July 1953, when it was transferred to this Tribunal for disposal.

2. The relief claimed in the petition is that the election in question be declared to be wholly void, and the petition is contested by the respondents No. 1 to 3. One of the grounds taken in the petition for challenging the election is that Sri Virendra Swarup respondent No. 6 was not of the qualifying age of 30 years and as such the acceptance of his nomination paper by the Returning Officer was improper and this improper acceptance of the nomination has materially affected the result of the election. Another ground taken is that the election was not a free election by reason that the corrupt practices of bribery and undue influence extensively prevailed at the election and were practised by all the returned candidates and their agents. The respondent No. 1 and his men are said to be very influential and powerful in the educational circles at Kanpur and some other places, and similarly the respondent No. 2 is said to be influential and powerful in the Allahabad University and the respondent No. 3 in the Allahabad Bank Ltd., and it is alleged that these respondents and their supporters exercised undue influence upon the electors amenable to their influence by holding out to them various promises and threats. The case of the petitioner is that in many cases ballot papers were collected from the electors with their bare signatures without the electors having marked their preferences on them and without the electors' signatures having been attested; after such collection the respondents No. 1 to 3 and their supporters marked the preferences on these ballot papers according to their own requirements, got the electors' signatures on the ballot papers attested by the officers under their influence and then produced these ballot papers before the Returning Officer which all was in contravention of the election law. Each of these respondents No. 1 to 3 is said to have been working in the election for himself alone and not also for any other of these respondents. Respondent No. 10 is Sri Sharda Prasad Saxena who is a nephew of the respondent No. 1, and according to the petitioner's case this respondent was an active helper of the respondent No. 1 in the election and the respondents No. 1, 6 and 10 were working in concert. Some instances of undue influence are given in the schedule I attached to the petition and some more instances have been given on 14th May, 1955 under the orders of this Tribunal. Also two instances of bribery have been given in schedule II of the petition. Some other breaches of the election law and rules have also been alleged in the election petition, though they do not actually constitute any corrupt practice and are mere irregularities.

3. The contesting respondents do not admit that there were any corrupt practices or irregularities in the election and according to them the election was an absolutely fair election conducted in accordance with the election law. As to the age of the respondent No. 6 their contention in the beginning was that he was of the qualifying age of 30 years, but subsequently the respondent No. 1

has conceded on 14th May, 1955 that for the purposes of this case the age of the respondent No. 6 may be deemed to have been below 30 years on the date of nomination and the other respondents have acquiesced in it, and the respondents' only contention in this behalf now is that in the circumstances of the case the acceptance of the nomination of the respondent No. 6 by the Returning Officer was not an improper acceptance within the meaning of Section 100(1)(c) of the Representation of the People Act, 1951 but was merely a non-compliance with the provisions of Article 173 of the Constitution of India within the meaning of Section 100(2)(c) of the Act and as such a mere irregularity and that in any case the acceptance of the nomination did not materially affect the result of the election. The other contentions of the contesting respondents are that the deposit of security of Rs. 1,000 under Section 117 of the Representation of the People Act, 1951 was not by the petitioner himself and so his petition is liable to be dismissed on this ground and that the petition and its schedules have not been properly verified and are also vague and lacking in the necessary particulars required under Section 83 of the Act.

4. The respondents contended also that the petition was bad for non-joinder of three candidates, Sarva Sri Sheo Prasad, Jawala Prasad Singhal and Mathura Prasad; this matter was heard by Faizabad Tribunal and was disposed of on 20th March, 1953; as regards Sri Sheo Prasad it was held that he was already a party to the petition as respondent No. 7 and only his name had been wrongly given as Saraswati Prasad and this mistake was ordered to be corrected, and as regards the other two it was held that they were not necessary parties to the petition. That order of the Faizabad Tribunal is appended to this order as Annexure 'A'.

5 Thereafter the respondent No. 1 presented two applications to the Faizabad Tribunal on 4th April, 1953; one was that in his election petition the petitioner had taken some grounds which were not pertinent to the relief claimed by him, these grounds being those relating to the non-compliance with the provisions of the election law, *viz.* the commission of mere irregularities and as such pertinent only to the declaration of the election of the returned candidates to be void and not at all pertinent to the declaration of the election to be wholly void, which is the relief actually claimed by the petitioner, and the respondent prayed that these grounds should therefore be ignored and should not be inquired into; his other application was that certain portions of the petition were vague and indefinite and lacking in material particulars required by Section 83 of the Representation of the People Act, 1951 and these portions should be scored out. We heard these applications at length and disposed them of by our order dated 30th September, 1953, which is appended to this order as Annexure 'B' Our finding as regards the first application was that the petitioner could take all the grounds that he had actually taken in his petition and that all these grounds could and should be inquired into. As regards the second application our finding was that certain portions of the petition were vague and indefinite and wanting in material particulars; we ordered some of these portions, particularly paragraphs 16 and 17, to be deleted and in respect of the others we directed the petitioner to give the necessary particulars which were wanting and also gave him the liberty to inspect the ballot papers for the purpose of furnishing such particulars.

6 The respondents opposed the right of the petitioner to inspect the ballot papers and this opposition was based on the ground that the inspection would not serve any useful purpose for the purposes of the case, that it would infringe the secrecy of the ballot and that it would give the petitioner an opportunity to manufacture false evidence for this case, and after a reconsideration of the matter we on 11th November, 1953 modified our order dated 30th September, 1953 as regards the inspection of the ballot papers to this extent that we ordered the petitioner to first inspect only the attestation slips etc. of the ballot papers and after this inspection to submit a list of such ballot papers as he thought necessary to inspect for the purposes of the case and only after that he could be allowed to inspect the ballot papers; this order dated 11th November, 1953 was made to minimise the chances of the petitioner concocting false evidence. The petitioner inspected the attestation slips etc. and submitted a list of the electors whose ballot papers he wanted to inspect, and he was then asked to give the electoral roll numbers of these electors so that their ballot papers might be separated from the whole mass; however, he never gave the electoral roll numbers and ultimately absented himself on 3rd May, 1955 when this matter was taken up for final consideration, and consequently we made our order dated 7th May, 1955 refusing the petitioner the permission to inspect any ballot papers. Thereafter on 14th May, 1955 the petitioner gave some of the further and better particulars required of him by our order dated 30th September, 1953.

7. In the meantime the respondent No. 1 moved a writ petition in the Hon'ble High Court challenging only that part of our order of 30th September, 1953 by which we had held that the petitioner could take all the grounds that he had actually taken in his election petition and that all these grounds could and should be inquired into. The Hon'ble High Court considered *inter alia* the provisions of Section 84 (Relief that may be claimed by the petitioner) and Section 100 (Grounds for declaring election to be void) of the Representation of the People Act, 1951 and came to the finding that because the petitioner has prayed for the relief that the election be declared to be wholly void and has taken advantage of the provisions of clause (b) of Rule 119 of the Representation of the People Rules, 1951, as regards the period of limitation, he should be confined to the grounds laid down in Section 100(1) of the Act and should not be allowed to avail of any grounds mentioned in Section 100(2), and by its order dated 27th September, 1954 the Hon'ble High Court was pleased to give directions to this Tribunal accordingly. In compliance with these directions of the Hon'ble High Court we made an order on 12th January, 1955 holding that the grounds taken in paragraphs No. 11 to 14 and 18 to 26 of the election petition were not pertinent to the relief claimed by the petitioner and were outside the scope of Section 100(1) and could have been relevant only for the purpose of Section 100(2) as mere irregularities or cases of non-compliance with the provisions of the election law; we, therefore, decided not to consider these paragraphs of the petition but to leave them out of consideration, and that order of ours dated 12th January, 1955 is appended to this order as Annexure 'C'. The respondent No. 1 wanted that in the light of the order of the Hon'ble High Court dated 27th September, 1954 we should leave out of consideration some more portions of the election petition, but by our order dated 12th January, 1955 we were unable to give him any further relief in this behalf, and feeling dissatisfied he went up again to the Hon'ble High Court by means of a writ petition against our order of 12th January, 1955; however this writ petition was unsuccessful and was dismissed on 14th September, 1955.

8. The result, therefore, is that the only paragraphs of this election petition that subsist for inquiry are paras. Nos. 1 to 10, 15, 27, 28 and 29 and even some portions of paras. No. 27 and 28 have been ordered by us on 30th September, 1953 to be deleted on the ground of vagueness and indefiniteness, and in this inquiry we have to confine ourselves to the grounds specified in Section 100(1) of the Act. On the pleadings of the parties the following issues have consequently been framed by the Tribunal on 14th May, 1955:—

1. Did the petitioner himself deposit the security money? If not, is the petition liable to be dismissed for this reason?
2. Is the petition not properly verified? If so, what is the effect?
3. Do para. 15 of the petition and the schedules relating thereto suffer from the defect of non-compliance with the provisions of Section 83 of the Representation of the People Act? If so, what is its effect?
4. Does the case as regards the nomination of Sri Virendra Swarup come within the purview of Section 100(1)(c) or within the purview of Section 100(2)(c) only?
5. If the case is covered by Section 100(1)(c) as regards the nomination of Sri V. Swarup, has the result of the election been materially affected?
6. Did the corrupt practice of bribery or undue influence extensively prevail at the election in question and was the election, therefore, not a free election and is it liable to be set aside under Section 100(1)(a)?
7. Is the petitioner entitled to the relief claimed?

FINDINGS

9. *Issue No.* 6.—The petitioner has come into the witness box and has stated that on 20th April, 1952, the last date fixed for the return of the ballot papers by the electors to the Returning Officer, he himself was present in the office of the Returning Officer when Dr Brijendra Swarup respondent No. 1 came there accompanied by some friends and delivered to the Returning Officer about 2,000 or 2,500 ballot papers; similarly Dr. Ishwari Prasad came there accompanied by some friends and delivered in his presence about 1,000 ballot papers, and likewise Sri Beni Prasad Tandon came there accompanied by some friends and delivered in his presence about 1,000 ballot papers. His case in respect of each of these candidates is that the respective ballot papers had been collected by the candidate and his workers from the electors by undue influence unattested and unmarked and had been marked and got attested in the absence of the

electors and were then delivered to the Returning Officer on 20th April, 1952. The case of each of these respondents is one of absolute denial on the point of such collection, marking, attestation and delivery to the Returning Officer. The constitutency comprised of about 14,000 electors of whom about 10,000 actually voted. Under the law the elector has to sign his name on the ballot paper and to get his signature attested by an attesting officer, after which he had to mark on the ballot paper his order of preferences for the candidate and then to return it to the Returning Officer. The petitioner has given some evidence of the alleged collection by Dr. Brijendra Swarup and his workers and has also said something about the attestation of the ballot papers so collected and some evidence in rebuttal has been adduced by Dr. Brijendra Swarup, but no such evidence has been given by the petitioner in respect of Dr. Ishwari Prasad or Shri Beni Prasad Tandon and consequently no evidence has been adduced by these respondents No. 2 and 3 by way of rebuttal. The only evidence against these respondents in this connection is the solitary statement of the petitioner that on 20th April, 1952 each of these two respondents came up accompanied by some friends and delivered to the Returning Officer about 1,000 ballot papers but as against this statement of the petitioner on oath we have his statement in para. 13 of the election petition that the delivery to the Returning Officer was by 3 or 4 agents of the returned candidates and in this para. we find no mention of the presence of any of these candidates at the time of the alleged delivery; we have further to note that the petitioner has verified this para. 13 on information and legal advice only and not at all on personal knowledge whereas now he says that he has personal knowledge of this matter. In these circumstances we are not prepared at all to believe that any ballot papers were delivered to the Returning Officer by or on behalf of Dr. Ishwari Prasad or Sri Beni Prasad Tandon or that any unattested or unmarked ballot papers had been collected by or on behalf of them; in respect of these two candidates the petitioner has given no evidence at all to show that any undue influence was exercised by or on behalf of them, and we find that no such undue influence was exercised.

10. The petitioner's evidence of collection of ballot papers is directed against Dr. Brijendra Swarup only, who has come into the witness-box to say that no ballot papers were delivered by him or on his behalf to the Returning Officer and we see no good reason to believe the petitioner on this point in preference to Dr. Brijendra Swarup specially when there is no mention at all in para. 13 of the petition about the presence of Dr. Brijendra Swarup at the time of the alleged delivery and when para. 13 has been verified on information and legal advice only as mentioned above and not at all on personal knowledge. Unfortunately any record of the manner in which the ballot papers of this election were returned to the Returning Officer is not available, but the non-availability of such record would not necessarily mean that the petitioner's case on this point is true.

11. The Returning Officer of this election was Sri S. L. Govil, who was those days the Secretary of the Legislative Council, U.P. and had his office in the U.P. Secretariat, Lucknow; it is in evidence that he continued as the Secretary of the Legislative Council upto December 1952, when he proceeded on leave and was ultimately removed from Government service. The respondent No. 1, Dr. Brijendra Swarup has been a member of the U.P. Legislative Council for a long time and it is alleged by the petitioner that as such Sri Govil was under the influence of Dr. Brijendra Swarup and went out of his way in several respects to help Dr. Brijendra Swarup in this election, but the petitioner has failed to make out any connection between Sri Govil's conduct of this election and his removal from Government service, and the case of the respondent is that these allegations of the petitioner are altogether groundless. Our own view is that there may have been some indiscretion here and there on the part of Sri Govil in the conduct of this election, but it must have been in the ordinary course of business only and not because of any deliverate intention on his part to help the respondent No. 1 to the prejudice of the other respondents as we are not satisfied that Dr. Brijendra Swarup had any special influence with Sri Govil. In any case the petitioner has failed to make out his contention that Sri Govil accepted from the respondent Nos. 1 to 3 or their workers any ballot papers which should have been returned to him by the electors themselves by post or through special messengers as prescribed in rule 66 of the Representation of the People Rules, 1951.

12. Coming now to the fact of the actual collection of unattested and unmarked ballot papers by and on behalf of Dr. Brijendra Swarup, we must say that the evidence on this subject is very meagre and quite unsatisfactory to prove that there was any such collection, and that in any case it does not prove that any such collection was on an extensive scale. Certainly Dr. Brijendra Swarup is an eminent person with much influence; he is an Advocate of the

standing of some 55 years in the profession and has been the President of the Kanpur Bar Association for some 15 years; also he has been a member of the U.P. Legislative Council for 10 or 11 years or more; he was the Chairman of the Kanpur Municipal Board and also of the Kanpur Improvement Trust; for some 20 years he was the President of the Society and Trust that runs the D.A.V. Degree College and the D.A.V. Inter College at Kanpur and the D.A.V. College at Dehra Dun; also he has been the President of the Managing Committee of the P.P.N. Higher Secondary School, Kanpur and has also been associated with the management of the Har Sahai Jagdamba Sahai College, the Jwala Devi Girls' Inter College and the Hari Kishan Girls' Higher Secondary School, Kanpur; further he has been the Dean Faculty of Law of the Agra University since 1929 and has also been the Head Examiner in Law in this University for many years; the Principal of the D.A.V. Degree College, Kanpur, is Sri Kalka Prasad Bhatnagar and that of the D.A.V. Inter College, Kanpur, is Sri Shiva Kumar Lal Srivastava R.W. 2, and both of them are members of the U.P. Board of High School and Intermediate Education; Dr. Brijendra Swarup has been a member of the Agra University Executive Council and Senate and of the Allahabad University Court, and also his sons Sri Devendra Swarup and and Sri Virendra Swarup respondent No. 6 and nephew Sri Sharda Prasad Saxena respondent No. 10 have been members of the Agra University Senate; further Sri Devendra Swarup is a member of the U.P. Board of Education and was once the Chairman of the Education Committee of the Kanpur Municipal Board, and Sri Kalka Prasad Bhatnagar is a member of the Agra University Executive Council and also of several committees of this University. Sri Harnam Shankar, son-in-law of the respondent No. 1 was the Income-tax Officer at Kanpur in the election days. Dr. Brijendra Swarup is also on friendly terms with Dr. K. N. Katju, who is now the Defence Minister of India and was previously the Minister of Law and Justice in U.P., and whose son Sri S. N. Katju Advocate, Allahabad received his professional training in Kanpur at the hands of Dr. Brijendra Swarup; further, he is friendly with Dr. Sampuranand, Chief Minister of U.P., and his brother Sri Paripurnanand Verma of Kanpur. Dr. Brijendra Swarup's elder brother was Rai Bahadur Babu Anand Swarup, who too was a member of the U. P. Legislative Council and was for some time its Deputy Speaker also. In this election Dr. Brijendra Swarup was recommended by the U.P. Congress Parliamentary Board to the All India Congress Parliamentary Board for a Congress ticket, although ultimately the recommendation was not accepted by the latter body. One of his sons is married to a daughter of Dr. N. P. Asthana, the well-known Advocate and educationalist of Allahabad. In fact the petitioner himself has produced a copy of an appeal Ex. P.4 issued for the respondent No. 1 in this election; this appeal is over the names of some well-known leaders of public opinion in the spheres of law, politics and education and briefly summarises the contribution of Dr. Brijendra Swarup in the field of law, education, politics and public life, and there is no dispute between the parties on the question of his eminence and influence.

13. The contention of the petioner is that Dr. Brijendra Swarup and his associates took unfair advantage of their position and influence and collected by undue influence a very large number of ballot papers from the electors unattested and unmarked, as it was within the power of Dr. Brijendra Swarup and his associates, including Principals Kalka Prasad Bhatnagar and Shiva Kumar Lal Srivastava, to appoint the electors as lecturers in the colleges and to give them promotion, to have them appointed as examiners of the Agra University and of the U.P. Board of Education and as members of the various committees of the University and the Board, to get their books approved as text-books for the schools and colleges and to get the status of their educational institutions raised, and in many cases such promises were actually held out to the electors; after such collection Dr. Brijendra Swarup and his associates marked preferences on these ballot papers according to their needs and wishes and get them attested by a few attesting officers who were under their influence and control and finally delivered them to the Returning Officer on 20th April, 1952. The contention of the respondent No. 1 is that no unfair advantage was taken by him or his friends of their position or influence, no ballot papers were collected at all whether unattested and unmarked or otherwise, no undue influence was exercised on any elector and no promises were held out and that Dr. Brijendra Swarup got such a large number of votes because of his eminence and popularity only. We may mention that out of 9,862 electors who cast their votes in this election as many as 3,129 marked their 1st preference for Dr. Brijendra Swarup; there were ten other candidates in the field and the number of first preferences marked for Dr. Brijendra Swarup was greater than that marked for any other candidate; the statement as to the result of the poll and the transfer of votes prepared by the Returning Officer under Rule 104 and Schedule III of the Representation of the People Rules, 1951, is on the record as Ex. R-7, and it shows that his votes exceeded the quota, *viz.* the num-

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forthwith, and his surplus votes had to be transferred to the other candidates in accordance with the second preference indicated on them. The number of first preference marked for the other candidates were 1,995 for Dr Ishwari Prasad, 1,550 for Sri Beni Prasad Tandon, 753 for Sri B. L. Vaish, 645 for Sri Prabhat Misra, 640 for Sri R. C. Bhargava, 613 for Sri Virendra Swarup 248 for Sri Shiva Prasad Sinha, 117 for Sri Shri Ratan Shukla petitioner, 89 for Sri Girdhar Gopal and 23 for Sri Sharda Prasad Saxena.

14. The constituency comprised of about 14,000 electors of whom about 3,000 belonged to Kanpur. The D.A.V. Degree College, Kanpur is a very big institution with about 5,000 students on its rolls and about 200 teachers on its staff, and Dr. Brijendra Swarup says that out of these 200 teachers about 100 must have been on the electoral roll of this constituency Similarly, he says that about 200 of the legal practitioners of Kanpur were on the electoral roll and the majority of them were members of the Kanpur Bar Association of which he is the President. As to the collection of ballot papers the petitioner states on oath that he himself saw Dr. Brijendra Swarup and his sons Sri Devendra Swarup and Sri Virendra Swarup, who too are legal practitioners, collecting ballot papers one day in the Bar Association and the Court compound and similarly he saw Dr. Brijendra Swarup collecting ballot papers like this one day in the D.A.V. Degree College, Kanpur, and he has no personal knowledge about any other collection of ballot papers. Dr. Brijendra Swarup has come into the witness-box to deny such collection and has also examined Sri Gokul Prasad R.W. 1, a legal practitioner of Kanpur, to say that there was no such collection in the Bar Association or in the court compound, and similarly Sri M. M. Pandey R.W. 3 and Sri Sharda Prasad Saxena respondent No. 10, R.W. 7, who are members of the staff of the D.A.V. Degree College, the latter being its Vice-Principal, have come forward to say that there was no such collection in their College. The petitioner has given no evidence to corroborate his statement about such collection and we see no good reason to believe the petitioner in preference to the respondent No. 1 and his witnesses on this point. In his petition the petitioner gave no indication at all that there was any collection of ballot papers in the Kanpur Bar Association or the Court compound although if any such collection was within his personal knowledge it ought to have found a mention in the petition. In para. 15 of the petition the petitioner says that there was a collection of the ballot papers by Dr Brijendra Swarup and his sons and associates in the two D.A.V. Colleges of Kanpur, the D.A.V College of Dehra Dun and the P.P.N. Intermediate College of Kanpur by undue influence and in Schedule I of his petition he gave a list of the electors of these institutions subjected to undue influence by Dr. Brijendra Swarup, Sri Devendra Swarup and Principal Kalka Prasad Bhatnagar. Strangely enough he verified this schedule and list as well as para. 15 of the petition from information only and not from any personal knowledge, although according to his statement on oath he had seen such collection personally in the D.A.V. Degree College at least. With his petition he gave no list of the electors of these four institutions alleged in para. 15 to have been subjected to undue influence by the associates of Dr. Brijendra Swarup other than Sri Devendra Swarup and Principal Kalka Prasad Bhatnagar and so he was asked to give such a list; he gave such a list on 14th May, 1955 but in this list he included also the names of the electors not belonging to these institutions and not indicated in para 15 of the petition and mentioned for the first time that there was a collection in the Bar Association also, and it is significant that in this list this collection in the Bar Association is said to have been not by Dr. Brijendra Swarup or Sri Devendra Swarup, but by other persons only including of course Sri Virendra Swarup, and again this list has been verified on information only, although according to the petitioner he had personally seen the collection being made in the Bar Association by Sri Virendra Swarup and others In these circumstances we are quite unable to believe the petitioner that there was any collection of unattested and unmarked ballot papers in the Bar Association or the Court compound or the D.A.V. Degree College, Kanpur

15. Perhaps because of the predominance of Dr. Brijendra Swarup in the D.A.V. Degree College, Kanpur, it was not possible for the petitioner to produce any evidence to corroborate his own testimony as to the collection of the ballot papers there, but it should not have been difficult for him to produce evidence about the collection in the Kanpur Bar Association and the Court compound, specially when according to the petitioner there is in the Bar Association a party which is opposed to Dr. Brijendra Swarup, and members of the Bar and of the public could have been produced to prove the collection in the Bar Association and the court compound, had there been any such collection. In cross-examination Dr. Brijendra Swarup has stated that in the election days all the members of the Bar Association were for him and the implication is that

there was, therefore, no need for him to collect from the members of the Bar any unattested and unmarked ballot papers as they would have undoubtedly voted for him in any case, and this statement of Dr. Brijendra Swarup appears to be true because we actually find Barrister Narendra Jeet Singh, who according to the petitioner is opposed to Dr. Brijendra Swarup, joining in the appeal Ex. P|4 issued in support of Dr. Brijendra Swarup. The petitioner admits that in his presence no undue influence was exercised upon any elector by holding out any inducement and thus we have no evidence of any inducement having been offered to any member of the Bar to part with his ballot papers; there is certainly the statement of the petitioner that inducement in the form of appointment as lecturers and examiners in law was held out to some legal practitioners but his knowledge on this subject is mere hearsay; the petitioner goes to the extent of saying that in some instances the only inducement held out was that the electors were told that by handing over their ballot papers unattested and unmarked they would be saved from the botheration of getting their ballot papers attested and from the expenses of returning them by registered post, and in our opinion such an inducement could hardly have carried any weight with any elector, whether a legal practitioner or not. There were three members to be returned and the petitioner says that when in addition to himself Dr. Brijendra Swarup set up his son Sri Virendra Swarup and nephew Sri Sarda Prasad Saxena in order to capture all the three seats for the family there was some resentment in the electorate and to remove this resentment Sri Virendra Swarup and Sri Sarda Prasad Saxena withdrew from the contest and made an announcement to this effect in the press. Thus the only member of the family left in the field was Dr. Brijendra Swarup, and we think that he was sufficiently popular with the electorate, specially in Kanpur, and did not require the collection of any ballot papers for his success. A large number of electors belonged to Kanpur, *viz.* about 3,000 out of about 14,000, and the only other candidate of Kanpur in the field was the petitioner, who perhaps was not so popular because he had not such a voluminous record of public work to his credit and who was also out of public life for some years on account of his having taken up private employment. We are, therefore, very doubtful if any ballot papers were really collected by or for Dr. Brijendra Swarup in the Kanpur Bar Association or the Court compound or in the D.A.V. Degree College, Kanpur.

16. There is no evidence of any collection of ballot papers from the electors of the D.A.V. Inter College, Kanpur, or of D.A.V. College, Dehra Dun, or of the P.P.N. Higher Secondary School, Kanpur, mentioned in para. 15 of the petition. The petitioner has adduced some evidence of the collection of ballot papers from other electors not covered by para. 15 of the petition and not indicated at all in the petition. His witness Sri Nand Kishore Dixit P.W. 2 is a teacher in the Marwari Vidyalaya, Kanpur, who says that Sri Prem Narain Nigam, another teacher of his college, collected his ballot paper for Dr. Brijendra Swarup and that the inducement held out to him was that he would be appointed an examiner of the U.P. Board; now in the petition there is no mention at all of Sri Dixit or even of the Marwari Vidyalaya College nor is there any mention of any Sri Prem Narain Nigam having collected any ballot papers for Dr. Brijendra Swarup, nor was the name of this Sri Dixit included in the list of witnesses filed by the petitioner in this case, and a surprise was sprung upon the respondent No. 1 by suddenly putting this Sri Dixit in the witness-box. Sri Dixit says in examination in chief that he signed the ballot paper and gave it to Sri Nigam without caring to see whether the ballot paper was of this constituency or was of the Teachers' constituency, and in cross-examination he says that he did not even see if it was a ballot paper or was some other paper only. He admits that he is an old friend of the petitioner's son, Sri Ram Ratan Shukla, and in these circumstances we are not satisfied from his testimony that any ballot papers were really collected for Dr. Brijendra Swarup.

17. Sri Harnarain Misra P.W. 3 is a teacher in the S.D. Degree College of Kanpur and he deposes about the collection of ballot papers from the teachers of this college in the college premises by the respondent No. 1 himself. The name of this college is not mentioned in para. 15 of the petition nor is it indicated anywhere else in the petition. Sri Misra says that during the election days the respondent No. 1 visited the college on two consecutive days and each day the teachers available were called to the principal's room and requested in the presence of the Principal to hand over their ballot papers unattested and unmarked and most of them did so. He says that some teachers of the College including Sri Ajodhya Nath Sharma had been actively canvassing in the college for the respondent No. 1 and asking for the ballot papers unattested and unmarked by telling the teachers that they could get examinerships through Dr. Brijendra Swarup only. He adds that he himself and another teacher, Sri Brahspati told the respondent No. 1 that they would not part with their ballot papers

like this, whereupon the respondent No. 1 observed to the witness aside that perhaps he did not care for examinerships and the witness told him that he did not if they came to him through the surrender of democratic rights, *viz.* the electoral rights. To rebut his testimony the respondent No. 1 has come into the witness-box and has also examined the Principal of the S.D. College Sri L. C. Tandon as R. W. 5 and Sri Ajodhya Nath Sharma as R.W. 6. The respondent No. 1 says that he never visited the S.D. College at all in the election days even for canvassing or any other purpose and it is false altogether that he went there to collect any ballot papers. Principal Tandon too says that it is not true that in the election days the respondent No. 1 ever came to him in the college or that he sent for any of his teachers in connection with the respondent's election and that it is altogether false that any teachers of his college gave their ballot papers to the respondent No. 1 in his presence unattested and unmarked. Sri Ajodhya Nath Sharma does not know if the respondent No. 1 ever visited the College in the election days and if the Principal called the teachers to his room to meet the respondent; he definitely and unambiguously denies having been called by the Principal for any such purpose or having gone to the Principal's room on any such occasion; he contradicts Sri H. N. Misra P.W. 4 by saying that he was never with Misra or any such occasion; he denies also having done any canvassing etc. for Dr. Brijendra Swarup in this election and says that he never collected any ballot papers for him. Now we see no good reason to believe Sri H. N. Misra in preference to Dr. Brijendra Swarup or Principal Tandon or Sri Ajodhya Nath Sharma specially when we find that Sri Misra is not an altogether disinterested witness; in the election in question he joined in an appeal in support of the petitioner and in another appeal in support of Sri B. L. Vaish, who according to the respondent No. 1 is helping the petitioner in this case; also he is a member of the Managing Committee of the Kanyakubja College, Kanpur, of which the President is Sri Brahmanand Misra, who admittedly is a friend of the petitioner and is helping him in the conduct of this case. We are, therefore, not satisfied about any collection of ballot papers in the S.D. College.

18. Sri Sheo Narain Varma P.W. 4 is another member of the staff of the S.D. College who says that his ballot paper was collected by Dr. Brijendra Swarup; this collection is alleged to have been made not in the college but at the house of the witness Arya Nagar, Kanpur, and the witness has nothing to say on the subject of the alleged collection in the college. The elder brother of this witness is Sri Ram Narain Varma, who was those days on the staff of the D.A.V. Inter College, Kanpur, but is no longer there and the story of this witness is that pressure was exercised upon him by the respondent No. 1 through Sri Ram Narain Varma and thereby he was compelled to part with his ballot paper unattested and unmarked and that the respondent No. 1 himself came to his house in Arya Nagar for this purpose. In the petition we find no mention of this witness or even of Arya Nagar, and the respondent No. 1 denies having ever gone to his house and having collected his ballot paper. We see no good reason to believe this witness in preference to the respondent No. 1. His grievance against the authorities of the D.A.V. Inter College, including the respondent No. 1, is that Sri Ram Narain Verma was not recommended by them for teaching the Inter Classes and so Sri Ram Narain Verma had to leave the College and Kanpur to get a better job elsewhere, and this grievance may be a motive for him to come and depose against the respondent.

19. Srimati Jainti Tewari P.W. 5 is the Principal of the Jwala Devi Girls' Inter College, Kanpur and lives in Arya Nagar, Kanpur. She says that Dr. Brijendra Swarup came to her house and collected her ballot paper unattested and unmarked She says further that the management of her college is in the hands of the respondent No. 1 and his friends including Sri Paripuranand Verma, Principal Kalka Prasad Bhatnagar, Principal Shiva Kumar Lal and Sri Sharda Prasad Saxena. In January 1952 she was suspended by the college authorities and she says that her suspension was the result of the displeasure of Sri Shivakumar Lal with her; forthwith she instituted a suit in the Civil Courts against the college authorities including the respondent No. 1 for redress, and that suit was pending in the election days and is still pending. Her story is that Dr. Brijendra Swarup came to her house in Arya Nagar and took away her ballot paper on the assurance that he would get settled to her satisfaction the dispute between her and the college authorities. Her name was not mentioned at all in the election petition nor was there any indication in the petition about her college or Arya Nagar. The respondent No. 1 denies having gone to her house or having held out any assurance to her or having collected her ballot paper, and there can be no good reason to believe the witness in preference to the respondent No. 1. In assessing her credit we have also taken notice of the fact that she is the wife of Sri Manikant Tewari who is a counsel for the petitioner in this case, and taking everything into consideration we are not satisfied from her testimony that any collection of ballot papers was made by or for Dr. Brijendra Swarup.

20. Sri Shivalok Ram P.W. 6 is the Head Clerk of the Kanyakubja Inter College, Kanpur and he deposes about the collection of ballot papers by the respondent No. 1 himself in the Kanyakubja College; this collection is said to have been on two days in the Principal's room in the College; the witness himself was not an elector in this election but he says that on each of these occasions he happened to be present in the Principal's room in the regular course of business and he actually saw the teachers of the College handing over their ballot papers to the respondent No. 1 and the inducement held out by the respondent No. 1 was that he would get the college raised from an Inter College to a Degree College The name of this College finds no mention in the petition and the respondent No. 1 denies having visited this College at all in the election days for any purpose whatsoever. The Principal of this College those days was Sri K. K. Tewari who has been examined by the respondent as R.W. 9, and he contradicts Sri Shivalok Ram in all particulars and thoroughly supports the respondent No. 1; he is a retired District Inspector of Schools and we see no good reason to believe Sri Shivalok Ram in preference to the respondent No. 1 or Sri K. K. Tewari. We have to remember that Sri Brahmanand Misra, friend and supporter of the petitioner, is the President of the Managing Committee of the Kanyakubja College, Kanpur, where the collection is said to have been made and where Sri Shivalok Ram is the Head Clerk and taking every thing into consideration we are not disposed to believe that there was any collection of ballot papers by or on behalf of the respondent No. 1 in this College.

21. Next we have Syed Riazul Hasan P.W. 7, who lives and runs a Chappal Factory in Mohalla Anwarganj of Kanpur and who was an elector in this election. He says that the respondent No. 1 came to his house-*cum*-factory one day accompanied by Sri Ahmad Husain Magistrate who asked him to sign his ballot paper and hand it over to him for Dr. Brijendra Swarup and he did so just then without marking it or getting it attested; he adds that he did so because Sri Ahmad Husain who is a friend of his father told him that all the other Muslim graduates had also handed over their ballot papers to him like this. This Sri Ahmad Husain is a Honorary Magistrate who lives at a short distance only from the house of the respondent No. 1 and according to the petitioner Sri Ahmad Husain is very friendly with the respondent No. 1 and was his active worker and ardent supporter in this election. The respondent No. 1 denies any friendship between him and Sri Ahmad Husain but admits that he got his own ballot paper of this election attested by Sri Ahmad Husain. In the petition we find no mention of Syed Riazul Hasan's name nor do we find any indication that ballot papers were collected in Anwarganj, and the respondent No. 1 has come into the witness box to say that he never went to this person to collect his ballot paper. We see no good reason to believe this witness in preference to the respondent No. 1, and we are not satisfied that there was any such collection.

22. Then we have Sri Hira Lal Khanna P.W. 8 who was once on the staff of the D.A.V. Degree College, Kanpur; he wanted to be appointed the Vice-Principal of the College but when he was not so appointed he left this College and joined the B.N.S.D. Inter College where he was the Principal for 24 years upto his retirement a few years back. He, too, is a well-known educationalist of Kanpur and according to the respondent No. 1 he is actively helping the petitioner in this case. He has practically nothing to say about the matters in controversy in this case; he has been produced to state only that in or about 1934 there was an election to the Agra University Senate at which he, the respondent No. 1 and others were candidates; the respondent No. 1 and his friends won that election and in that election also the respondent No. 1 was accused of collecting the ballot papers, and that election was set aside by the then Vice-Chancellor of the Agra University, Dr. Diwan Chand, who was also the Principal of the D.A.V. Degree College, Kanpur, those days; however, Sri Hira Lal Khanna does not claim any personal knowledge of the alleged collection of ballot papers in that election and his knowledge is only based upon a letter of an elector of that election; further, no documentary evidence has been produced before us to show what facts Dr. Diwan Chand found proved in that case and on what grounds he set aside that election, and in these circumstances we are not satisfied that on any previous occasion either any ballot papers were collected by or on behalf of the respondent No. 1.

23. Lastly, we have Sri Achyutanand P.W. 9 who is a lecturer in the Gur Narain Khattri Inter College, Kanpur and who says that on the request of Sri Shivakumar Lal Srivastava he handed over to him his ballot paper of this election for the use of Dr. Brijendra Swarup unattested and unmarked in the hope that Sri Shivakumar Lal Srivastava would be helpful to him in future. The name of this witness or his college was not indicated at all in the petition, and Sri Shiva Kumar Lal Srivastava has come forward as R.W. 2 to deny all this, and there can be no good reason to believe Sri Achyutanand in preference to Sri Shiva

Kumar Lal Srivastava. The credit of Sri Achyutanand has also been impeached on the ground that he is a near collateral of Sri Brahmanand Misra and that Sri Hiralal Khanna P.W. 8 is a member of the Managing Committee of the G.N.K. Inter College where he is the lecturer. We are, therefore, not satisfied that his ballot paper either was collected and this disposes of the petitioner's oral evidence on this topic.

24. No doubt the oral evidence adduced by the petitioner coupled with the fact of the great influence wielded by the respondent No. 1 due to his eminence gives rise to a suspicion that ballot papers unattested and unmarked may have been collected by and for him as is the case of the petitioner, and this suspicion is somewhat strengthened by the appearance of a few of the attestation slips through which the petitioner's counsel has taken us, but all this suspicion, however strong, can be no substitute for evidence and it falls much short of the standard required to prove the fact of the alleged collection of ballot papers. Evidence was adduced by the respondent also to show that there was no collection at all, but any lacuna in this evidence cannot cure the defects in the case and evidence of the petitioner himself, and the probability appears to be that there was no collection of the ballot papers, that on account of his popularity particularly at Kanpur the respondent did not stand in need of any such collection and that the electors gave their votes to him in the ordinary course in the free exercise of their electoral right. The defects to be found in the attestation slips may have crept up owing to the carelessness and inadvertance on the part of the electors and the attesting officers and would not necessarily imply that ballot papers were collected unattested and unmarked by the respondent No. 1 or on his behalf.

25. On the subject of attestation the petitioner's case is embodied in para. 11 of the petition, which says that the ballot papers collected for Dr. Brijendra Swarup were marked by his friends and agents and attested by Sri Ahmad Husain Magistrate, Sri A. R. Bhatnagar Magistrate, who is the son of Sri Kalka Prasad Bhatnagar, and Sri Raghubir Prasad Srivastava Principal of the P.P.N. Inter College, Kanpur. In this election every Magistrate, Gazetted Officer and Principal of a College or of a Higher Secondary School was empowered to function as an attesting officer and could attest the signatures of an elector made in his presence, and if the elector was not personally known to the attesting officer some body had to identify the elector to the satisfaction of the attesting officer. In his statement on oath the petitioner says that after the collection the ballot papers were attested at the house of Dr. Brijendra Swarup, who is the next-door neighbour of the petitioner in the Civil Lines of Kanpur; the petitioner says further that he knows about the attestation because one evening he went to the house of Dr. Swarup to ask for his vote and the votes of his sons in this election and then he found present there Sri Surendra Mohan Saxena Principal of the Kanpur Municipal Higher Secondary School, Nawabganj, Principal R. P. Srivastava, Sri Ahmad Husain Magistrate and one or two other attesting officers whose names he does not remember; in cross-examination he says that these attesting officers were at that time having tea with Dr. Brijendra Swarup in his drawing room, and he did not notice any ballot papers on the scene nor did any talk about election take place in his presence. Sri Surendra Mohan Saxena's name is not mentioned in para. 11 of the petition in connection with attestation and is mentioned in para. 15 only in connection with the collection of the ballot papers. On his request the petitioner was allowed an inspection of the attestation slips and after the inspection he stated on oath that the ballot papers collected for Dr. Brijendra Swarup unattested and unmarked were attested by Principal Surendra Mohan Saxena, Principal Raghubir Prasad Srivastava, Sri Jai Krishen Principal of Har Sahai Jagdamba Sahai College, Kumari Ghosh Principal of Hari Krishna Girls' College, Kanpur, Sri Ahmad Husain Magistrate and Sri O. P. Saxena Magistrate, who all were friendly to Dr. Brijendra Swarup and were under his influence; Principal Saxena attested 416 ballot papers, Principal R. P. Srivastava 291, Principal Jai Krishen 155, Sri Ahmad Husain Magistrate 68, Kumari Ghosh 52 and Sri Saxena Magistrate 40. At the time of arguments the case in respect of Sri Saxena Magistrate was not pressed as the number of ballot papers attested by him was rather small. The petitioner did not appear to know him even and was not sure whether he was a Magistrate or a Munsif, but the case was pressed in respect of the other five; however, it is significant that the names of Principal Saxena, Principal Jai Kishen and Kumari Ghosh do not find a mention at all in para. 11 of the petition.

26. One of the points taken by the petitioner in this connection is that the number of ballot papers attested by each of these officers is rather large and striking and supports the petitioner's contention that unmarked and unattested ballot papers were collected and then got attested by such officers as were under the influence of Dr. Swarup. Now Dr. Swarup was certainly those days a member of the Managing Committee of the Hari Krishen Girls' College, Kanpur of which

Kumari Ghosh was the Principal, and also there appears to be at least some association between Sri Ahmad Husain Magistrate and Dr. Swarup, but the number of ballot papers attested by these two officers is not after all so large or striking as to attract the attention and it may safely be said that they must have made these attestations in the ordinary course and there need not be an inference that they went out of their way to attest these ballot papers in the absence of the electors to oblige Dr. Swarup. The number of ballot papers attested by Principal S. M. Saxena, Principal R. P. Srivastava and Principal Jai Krishen is considerably large being 416, 291 and 155 respectively, and also these gentlemen have associations with Dr. Swarup. Sri S. M. Saxena is the Principal of the Nawabganj Higher Secondary School which is run by the Kanpur Municipal Board and he was appointed when Sri Devendra Swarup, son of Dr. Swarup, was the Chairman of the Education Committee of the Municipal Board and is, therefore, under an obligation to Dr. Swarup; he is a Saxena Kayesth just like Dr. Swarup and comes from Jhansi whence comes also a daughter-in-law of Dr. Swarup, and the suggestion on behalf of the petitioner is that this lady is of Principal Saxena's family; Sri R. P. Srivastava is the Principal of the P.P.N. Higher Secondary School, Kanpur, while Dr. Swarup is the President of the Managing Committee of this school; similarly Sri Jai Krishen is the Principal of the Har Sahai Jagdamba Sahai Inter College, Kanpur and Dr. Swarup is on the Managing Committee of this College. But at the same time we have to note that the names of Principal Jai Krishen and Principal Saxena are not mentioned in para. 11 of the petition nor is the name of Principal Jai Krishen mentioned by the petitioner as one of those taking tea with Dr. Swarup in his drawing room; in para. 11 the name of Sri A. R. Bhatnagar Magistrate is also mentioned, but the petitioner has not referred us to any case in which Sri A. R. Bhatnagar may have functioned as the attesting officer. Then the number of ballot papers attested by Principal Saxena, Principal Srivastava or Principal Jai Krishen is after all not so very large as to attract any special attention or to lead to any irresistible inference that the ballot papers attested by them must have been collected unattested and unmarked. The number of electors of Kanpur was about 3000 and we do not know how many ballot papers were attested by any other of the attesting officers. In para. 12 of the petition the petitioner says that a considerable number of unattested and unmarked ballot papers collected in different districts were attested and marked at Kanpur, but no such attestation slips have been pointed out to us and the petitioner has confined his case to the electors of Kanpur only. Perhaps Principal Saxena, Principal R. P. Srivastava or Principal Jai Krishen attested more ballot papers than any other attesting officer but the only explanation possible for it is not their association with Dr. Swarup; an alternative explanation may be that these gentlemen may have been imbued with a greater sense of duty and social service and may have been more accommodating and considerate to the electors and may have made themselves more readily accessible to them for this labour of more love.

27. Out of about 10,000 votes cast in this election the petitioner has selected about 1,000 including the cases in which these officers functioned as the attesting officers, and out of these about 1,000 attestation slips the petitioner has referred particularly to some 80 attestation slips in support of his contention that ballot papers were collected unattested and unmarked and were subsequently got attested by these particular officers. His contention is that in most of these cases the particular attesting officer lived or worked at a great distance from the house or place of work of the elector and yet the elector's signatures are found to have been attested by that particular officer although the elector had other attesting officers nearer to his house or place of work; in some cases it is to be noticed that the elector has been identified by somebody for the satisfaction of that particular officer and the petitioner's contention is that the elector in some of these cases must have been too well known to require any identification and even if he was not so well known to that particular officer he was well known certainly to other persons who were nearer at hand and could function as attesting officers. The reply may be that in these days of easy transport distances do not matter much, specially in the same city, and an elector may have reasons of his own for going to a particular officer and not to another nearer at hand; that other officer may be very busy or very lazy and may not be so easily available; as to identification it may be that a friend may happen to be just present with the elector at the time of the attestation and may offer to identify him even though such identification may be not quite necessary. The attestation slip has got two portions; one is he declaration by the elector which is to be filled up, signed and dated by the elector and the other is the endorsement of the attesting officer which is to be filled up, signed and dated by the attesting officer; some attestation slips have been pointed out to us in which the date of declaration has been entered by the attesting officer himself, and some others have been pointed out in which some other entries of the declaration appear to have been made by somebody other

than the elector; the explanation may be that the elector did not care to make these entries with his own hand and got them made by a friend or that he omitted to date his declaration and when the attesting officer found the date missing he put down the date with his own hand instead of formally asking the elector to do so.

28. A few glaring defects have also been pointed out to us in some of the attestation slips; *e.g.* in one case we find two attestation slips of the same elector *viz.*, Sri Virendra Vindyarthi whose electoral roll number is 1976, and in both of them the attestation is by Principal R. P. Srivastava; in the case of a female elector named Kuldip Kaur, elector roll number 706, the attestation is wanting altogether; in the case of another female elector Srimati Gyanwati Verma, electoral roll number 385, we find that in the endorsement of attestation the attesting officer Principal Jai Krishen has mentioned the name of the elector as Sri Gyan Nath Verma personally known to him; in the case of Sri Sharda Prasad Saxena respondent No. 10 the attestation purports to have been made by Sri Harnam Shanker, Income Tax Officer, son-in-law of Dr. Swarup, but these signatures of Sri Harnam Shanker differ from his signatures on his own attestation slip with the electoral roll No. 563; the attestation in the case of Sri Kailash Behari Lal, electoral number 814, was by Principal R. P. Srivastava on the identification of one Gokaran Nath Srivastava, but in the endorsement of attestation we find the elector's name as Gokaran Nath Srivastava and not Kailash Behari Lal; in the attestation slip of Sri J. Chopra, elector roll number 648, we find no attestation at all; in the case of the elector with electoral roll number 763 we find the signatures of the elector missing altogether and in the endorsement of attestation the name of the elector as well as of the identifier is given as Kanahya Lal Gupta. On behalf of the respondent no explanation has been attempted to be given in respect of these serious defects, but on behalf of the petitioner either no direct evidence has been led to show that in these several instances the ballot papers were collected unattested and unmarked and in the absence of any such evidence we may not necessarily conclude that these cases are of collection of ballot papers and it may be that these defects are only the result of gross negligence and carelessness on the part of the electors and the attesting officers.

29. In view of what has been said above we are not quite satisfied that there was any collection of ballot papers in this case; there is certainly the suspicion that there may have been such a collection but this suspicion has not been substantiated by the petitioner's evidence, although the respondent's evidence either is not satisfactory enough to remove this suspicion altogether; however, suspicion is not proof and we find that the fact of collection of ballot papers, though not disproved by the respondent, has not been proved by the petitioner himself. The case of the petitioner is that in this election the ballot papers were collected unattested and unmarked and this collection by itself amounted to undue influence as defined in section 123(2) of the Representation of the People Act, 1951 as it was an interference on the part of the candidates and their agents with the free exercise by the electors of their electoral right to vote or refrain from voting or to vote in a particular manner for particular candidates; the contention of the respondents is that there was no such collection and that in any case the fact of mere collection would not amount to undue influence in the absence of specific evidence of the exercise of undue influence; our view is that the fact of collection itself has not been proved and so it is not necessary for us to determine as to whether the mere fact of collection, in the absence of any evidence of exercise of undue influence, would amount to undue influence. In a few instances the petitioner has sought to prove by direct evidence the fact of collection and of the exercise of undue influence and we have discussed all these instances above and found them not proved; no instance is relied upon in which undue influence may have been exercised without collecting the ballot paper, and we find that the corrupt practice of undue influence has not been proved in this case. No case of bribery has been proved, and no such case has been sought to be proved apart from the cases of undue influence discussed already; only two instances of bribery were mentioned in Schedule II of the petition, but no evidence worth the name was given in support of them; perhaps the petitioner alone came forward to say something on this point but his testimony appears to be mere hearsay, and on behalf of the respondent there is an absolute denial of bribery and we find that no bribery either has been proved. Our finding, therefore, on issue No. 6 is that it has not been proved that the corrupt practice of undue influence or bribery prevailed at the election or that the election in question was not a free election by any such reason, and we hold that the election is not liable to be set aside on any such ground.

30. *Issue No.* 1.—Section 117 of the Representation of the People Act, 1951 lays down that the petitioner shall enclose with the petition a Government Treasury receipt showing that a deposit of Rs. 1,000 has been made by him either in a Government Treasury or in the Reserve Bank of India in favour of the Secretary to the Election Commission as security for the costs of the petition, and in para. 29 of his election petition the petitioner says that this deposit has been made by him in favour of the Election Commission in the Kanpur Treasury and that the necessary Treasury challan is attached to his petition. The Election Commission appears to have accepted this deposit as sufficient and the respondents either did not in their written statements take any objection as regards this security, except that the respondent No. 2 alleged vaguely that he did not admit the contents of para. 29 of the petition Even the respondent No. 10 did not take any such objection in his written statement, but subsequently an application was presented on his behalf on 31st January, 1953 saying that the deposit in question had been made not by the petitioner himself but by one Kailash Chandra with the money provided by others and as such the provisions of Section 117 had not been complied with; and it was on this application of the respondent No. 10 that this issue has been framed. The petitioner has stated on oath that he deposited the security in this case in the Bank through a messenger and there is no evidence to the contrary. The receipt which must have been enclosed by the petitioner with his petition is unfortunately not to be found with the record, but the petitioner has obtained a Credit Certificate from the Kanpur Treasury on 9th February 1953 and it is Ex. P.7; it certifies that a sum of Rs. 1,000 has been deposited by the petitioner under the head Revenue Deposit, Provincial, *vide* R.D. 232, dated 28th June, 1952 as election petition fee. The contention of the respondents is that the petitioner himself should have deposited this money and could not cause it to be deposited by another Perhaps the petitioner himself deposited the money and the man who actually made the deposit was his messenger only as stated by the petitioner, and in these circumstances it would be incorrect to say that the terms of Section 117 were not substantially complied with; this sanction does not say that the petitioner himself has to go to the Bank or the Treasury to make the deposit, and we find that the petitioner is not liable to be dismissed on this ground.

31. *Issue No.* 2.—We have examined the verification of the petition and we think that the verification made is proper except perhaps for the fact that the contents of paras. 3, 5 and 7 have been verified to be true partly from personal knowledge and partly from information received without indicating the part verified from personal knowledge and that verified from information. However, this point is not of much consequence now as the petitioner has come into the witness box and has been cross-examined and from his statement we know which facts he meant to verify from personal knowledge and which from information, and this disposes of issue No. 2.

32. *Issue No* 3.—In our order, dated 30th September, 1953 we have already dealt with the question about the compliance or otherwise of the provisions of Section 83 by the petitioner as regards para. 15 of the petition and its schedules, and we have nothing further to add on this subject now.

33. *Issues No* 4 *and* 5—Contention of the petitioner in paragraph 4 of the petition was that one of the candidates for election, Sri Virendra Swarup respondent No. 6, was not of qualifying age on the date of nomination and as such was not qualified for being chosen as member of the Legislative Council; that his nomination paper was improperly accepted by the Returning Officer, that this improper acceptance of the nomination paper materially affected the result of the election and that, therefore, the election was wholly void within the meaning of Section 100(1)(c) of the Representation of the People Act, 1951.

These allegations made in the petition were denied by the answering respondents.

34. Factual part of this controversy was partly set at rest when respondent No. 1 gave statement in writing that for the purposes of the case Sri Virendra Swarup might be taken as not of qualifying age at the time of nomination. The other answering respondents, *i.e.*, respondents Nos. 2 and 3, did not make any such admission. Ordinarily admission of one respondent cannot be binding on other respondents having independent interests but facts of this case are rather peculiar. Issues were framed after the aforesaid admission made by respondent No. 1, and because of this admission no issue was framed about the age of Sri Virendra Swarup. The counsel for respondents No. 2 and 3 was all along present and he did not press for inclusion of an issue on that point. It was never pointed out, throughout the proceedings, to the Tribunal that an issue regarding age was

necessary. It was only at the fag end of the trial when arguments of the petitioner and of respondent No. 1 were over that the learned counsel for respondents No. 2 and 3 wanted to address arguments on this point. We, however, think that because of their silence throughout the proceedings respondents No. 2 and 3 must be taken to have acquiesced in the position taken up by the respondent No. 1. Another alternative was to frame an issue on this point and to give opportunity to the parties to lead evidence. Adoption of this course would have unnecessarily prolonged the proceedings of the case without much gain to respondents No. 2 and 3 because of the admission of respondent No. 1, Dr. Brijendra Swarup, who is father of Sri Virendra Swarup. It is possible we might have adopted this alternative course, but as we are going to hold that the petitioner failed to substantiate that the result of the election was materially affected because of the improper acceptance of the nomination of Sri Virendra Swarup, it would be shere waste of time to give opportunity to respondents No. 2 and 3 to agitate this matter at so late a stage. This being so, we hold for the purposes of this case that Virendra Swarup was not of qualifying age under Article 173 of the Constitution on the material date.

35. The pleadings of the petitioner clearly disclosed that his case was of improper acceptance of the nomination paper under Section 100(1)(c) of the Act. But, before evidence of the petitioner was recorded, it was very vehemently pressed from the side of the respondent No. 1 that in view of a ruling of the Supreme Court, which we shall presently consider, the petitioner was precluded from producing any evidence on this point. We did not agree with this contention and evidence was recorded on this issue as well.

Originally two sets of grounds were taken in the petition one pertinent for avoidance of the whole election and the other pertinent for the unseating of the successful candidates. The High Court eliminated the latter set of grounds under circumstances described in the introductory part of this judgment. In the Supreme Court ruling (Durga Shankar Mehta Vs. Raghuraj Singh reported as A.I.R. 1954 Supreme Court 530) provisions of Section 100(1)(c) and of Section 100(2)(c) are considered and compared. The cases falling under the former provision will result in the avoidance of the whole election and those under the latter provision will result in the unseating of the successful candidate only. Contention of the respondents was that the evidence disclosed that the case was covered by Section 100(2)(c) and not by Section 100(1)(c) and that, therefore, because of the order of the High Court, dated 27th September 1954 the Tribunal was precluded from recording any finding on the point.

We perused judgment of the Supreme Court. It clearly draws distinction between the cases where the acceptance of the nomination paper was due to any mistake, carelessness, negligence or incorrect judgment of the Returning Officer and the cases where want of qualification of a candidate was not apparent on the face of the nomination paper or electoral roll nor was it pointed out to him by means of an objection. It is held in that ruling that it would be improper acceptance of a nomination paper (1) if the want of qualification was apparent on the electoral roll itself or on the face of the nomination paper and the Returning Officer overlooked that defect; or (2) if any objection was raised and enquiry made as to the absence of qualification in the candidate and the Returning Officer came to a wrong conclusion on the material placed before him. Therefore, if either of the two alternatives exist in the present case, acceptance of the nomination of Sri Virendra Swarup must be held improper within the meaning of Section 100(1)(c).

36. It is not disputed that the nomination paper was in proper order and that no objection was made by anybody within the meaning of Section 36(2). The copy of the electoral roll (Ex. R2) which was admittedly filed along with the nomination paper, however, gave age of Sri Virendra Swarup as 29 years although the minimum qualifying age under Article 173 of the Constitution was 30 years. This entry of the electoral roll was sufficient to attract attention of the Returning Officer, which also appears from the two endorsements of the Returning Officer on the nomination paper. One of these endorsements shows that certificate of age of Sri Virendra Swarup was filed along with the nomination paper and the other shows that the said certificate was returned on the date of scrutiny. It was contended from the side of the respondent that the certificate was filed without the same being called for by the Returning Officer and that the age given in the copy of the electoral roll was of the year 1950 from which it could easily be calculated that age of Sri Virendra Swarup at the time of nomination was more than the minimum qualifying age. These contentions, in our opinion, have no force at all because the defect in age was apparent on the face of the electoral roll, the entries of which furnished conclusive evidence under section 36(7) of the

Act. This being so, the case clearly comes within the four corners of Section 100(1)(c) of the Act.

37. The only point that remains to be decided is about the effect of improper acceptance of the nomination paper on the result of the election. The relevant part of Section 100 is as follows:—

> "If the Tribunal is of opinion that the result of the election has been materially affected by the improper acceptance of any nomination, the Tribunal shall declare the election to be wholly void."

It is important to note that words 'has been materially affected' do not leave any room for conjecture or speculation. These words clearly mean that material effect on the result of the election must be positively proved and it is always for the petitioner to prove this by cogent evidence. Whenever this point cropped up before any election court it invariably held that the burden lay heavily on the petitioner. It is not use citing the cases decided by such courts after the authoritative pronouncement of the Supreme Court (Vashist Narain Sharma Vs. Dev Charndra—A.I.R. 1954 Supreme Court 513) to the effect that:—

> 'The language of section 100(1)(c) is too clear for any speculation about possibilities. The Section clearly lays down that improper acceptance is not to be regarded as fatal to the election unless the Tribunal is of opinion that the result has been materially affected'.

and that

> 'Where the finding of the Tribunal that the result of the election has been materially affected is speculative and conjectural the Supreme Court will interfere with the finding in special appeal'.

and further that

> 'Before the election can be declared to be wholly void under Section 100(1)(c) the Tribunal must find that "the result of the election has been materially affected".....

and,

> 'These words seem to us to indicate that the result should not be judged by the mere increase or decrease in the total number of votes secured by the returned candidate but by proof of the fact that the wasted votes would have been distributed in such a manner between the contesting candidates as would have brought about the defeat of the returned candidate'.

The Supreme Court realised the difficulty with which a petitioner is faced in attempting to discharge the burden cast upon him but found it equally difficult to relieve him of the duty cast upon him by the mandatory provisions of law. Another relevant passage from that judgment may usefully be cited:

> 'The casting of votes at an election depends upon a variety of factors and it is not possible for any one to predicate how many or which proportion of the votes will go to one or the other of the candidates. While it must be recognised that the petitioner in such a case is confronted with a difficult situation, it is not possible to relieve him of the duty imposed upon him by Section 100(1)(c) and hold without evidence that the duty has been discharged.'

38. In the present case no evidence at all has been produced for discharging the burden which lay heavily on the petitioner. At the time or arguments, too, almost nothing substantial was said about the effect on the result of the election. Whatever was said was simply conjectural and speculative. On the other hand it was shown from the side of the respondents that the result would be found unaffected if the first test given in the judgment of the Supreme Court is applied. Three kinds of cases are contemplated in that judgment first of which is relevant for our purposes and is as follows:—

> '(1) when the candidate whose nomination was improperly accepted had secured less votes than the difference betwen the returned candidate and the candidate securing the next highest number of votes'.

The present case is fully covered by the case given above. Looking into column 10 of the Chart (Ext. R7) which is the statement of the result of the poll and the transfer of votes we find that Sri Virendra Swarup got 91286 votes including those that came to him by transfer. Sri Vaish got 95726 votes and Sri Tandon who is the last of the successful candidates got 192182 votes. Difference between the votes of Sri Tandon and Sri Vais comes to 96456 which is more than the votes of Sri Virendra Sarup so that even if all of the votes that came to Sri Virendra Swarup had come to Sri Vaish his total number of votes would still have been smaller than the number of votes of Sri Tandon, and thus the result of the election would have remained unaffected. It is obvious that this method of calculation is based as an assumption in favour of the petitioner and yet the result is against him.

39. Therefore, in view of what has been said above, we find that Sri Virendra Swarup was not of qualifying age at the time of nomination and that his nomination paper was improperly accepted by the Returning Officer but we also hold that the petitioner has hopelessly failed to substantiate his case that the result of the election was materially affected by the improper acceptance of the nomination paper of Sri Virendra Swarup. We decide the issues accordingly.

40. *Issue No.* 7.—As shown above our finding on issue No. 6 is that the corrupt practice of bribery or undue influence has not been proved satisfactorily in this case, and our finding on issues 4 and 5 is that although in the case of the nomination of Sri Virendra Swarup respondent No. 6 there was improper acceptance of it by the Returning Officer yet this improper acceptance has not been proved to have materially affected the result of the election. Because of these findings of ours we do not see any ground to declare the election to be wholly void under Section 100(1) or to grant the petitioner any relief and his election petition must fail.

During the hearing of the case the petitioner has charged the respondent No. 1 of the commission of an illegal practice defined in Section 125(3) of the Representation of the People Act, 1951 by the issuing of a leaflet Ext. P4 having reference to the election in question and not bearing on its face the name and address of its printer and publisher The petitioner did not make any allegation about this illegal practice in his petition or in his evidence, and all of a sudden introduced this topic in the cross-examination of the respondent No. 1. Admittedly this leaflet is an appeal issued on baholf of the respondent No. 1 in this election and he paid the expenses of its publication and included them in his return of election expenses but his explanation of the absence of the name and address of the printer and publisher on its face is that the copy produced as Ext. P4 is only the proof copy and not the final copy in which form it was issued and distributed, the implication being that the final copy as issued and distributed bore on its face these particulars alright. From the appearance of Ext. P4 there may be some ground to suspect that it is not a proof copy but is a final copy as brought out and distributed, but in the absence of any other evidence on this subject we have only the statement of the respondent No. 1 on oath that it is a proof copy and not any one of the leaflets actually published and distributed in the constituency. As regards the issuing of such an appeal also we have only the admission of the respondent No. 1 in his cross-examination and no other evidence, and in all fairness to the respondent No. 1 we have in these circumstances to accept or reject his statement as a whole and not piecemeal; it is not open to us to accept the part of his statement that such an appeal was issued on his behalf while rejecting the other part that Ext. P4 is a proof copy only. The petitioner has given no evidence to explain how and when he came by Ext. P4, and there is no evidence on his behalf to show that Ext. P4 is one of the copies actually brought out and put into circulation. In these circumstances we are not satisfied that any such illegal practice is proved to have been committed in this election.

41. Another point taken by the petitioner at the time of arguments is that by getting Sri Virendra Swarup nominated in the election Dr. Brijendra Swarup practised fraud upon the electors inasmuch as the electors were induced to vote for a candidate without the necessary qualification of age and this fraud amounted to undue influence within the meaning of Section 123(2) by interfering with the free exercise by the electors of their electoral right; his contention is that as such it was a corrupt practice committed by Dr. Brijendra Swarup who should be dealt with suitably for it. In para 8 of the petition it was certainly alleged that Dr. Swarup got Sri Virendra Swarup nominated fraudulently with full knowledge that he was not of the required age, but nowhere in the petition was it contended that this alleged fraudulent act of Dr. Swarup

amounted to undue influence within the meaning of Section 123(2), and after giving the matter our best consideration we are not satisfied that this act constituted the corrupt practice of undue influence. Sri Virendra Swarup appears to have been below 30 years of age in this election and this fact must have been well known to Dr. Swarup and must have been within his special knowledge as the father; the High School Examination Certificate of Sri Virendra Swarup showed that he was below 30 years of age in the election and the electoral roll also showed the same thing, and yet for the purposes of the election Dr. Brijendra Swarup went out of his way to swear an affidavit that Sri Virendra Swarup was born in 1921 and not in 1925, and with the help of this affidavit Sri Virendra Swarup's date of birth was got changed in the High School Examination Certificate Ext. P4, and the amended certificate was produced before the Returning Officer in support of the fact that Sri Virendra Swarup had really attained the qualifying age of 30 years, and thereby the Returning Officer was persuaded to accept his nomination. In view of the concession made in this case by the respondent No. 1 as regards Sri Virendra Swarup's age it may reasonably be contended that the affidavit filed by him before the U.P. Board of Education as regards Sri Virendra Swarup's date of birth was false and that he acted fraudulently in getting his son nominated, but the question is whether this fraud, if any, interfered in any way with the free exercise of the electoral right in this election and constituted the corrupt practice of undue influence within the meaning of Section 123(2). Perhaps the conduct of Dr. Swarup in swearing the affidavit and in getting his son nominated was fraudulent, but we are not satisfied that this fraud, if any, interfered in any way with the electors free exercise of their electoral right or constituted the corrupt practice of undue influence as defined in the Representation of the People Act, 1951. By the nomination of Sri Virendra Swarup who did not possess the statutory qualification the electors were certainly afforded the opportunity to vote for him, but it was a mere invitation to the electors to vote for him and their freedom of choice to vote or not to vote for him was in no way interfered with; inspite of Sri Virendra Swarup's nomination the electors had perfect liberty to vote for other candidates in preference to him and this liberty was not encroached upon in any way. Our finding, therefore, is that although Dr. Swarup's act of swearing the affidavit in question thereby and getting Sri Virendra Swarup nominated may be open to some criticism, we do not think that it was even an indirect interference or an attempt to interfere with the free exercise of the electoral right and as such it does not constitute any corrupt practice on the part of Dr. Swarup.

42. In view of all that has been said above we would dismiss the election petition, but because of the somewhat peculiar circumstances of this case we would order the parties to pay their own costs rather than ask the petitioner to pay the costs of the contesting respondents in whole or even in part.

(Sd.) M. U. FARUQI,
Judicial Member.
The 10th December, 1955.

(Sd.) R. SARAN,
Chairman.
The 10th December, 1955.

Per A. SANYAL.

43. I had the advantage of reading the judgment of my learned colleagues, but I am unable to agree with them on some very vital points. I shall confine my judgment only to such points in which there is difference of opinion.

44. This case has been very badly conducted by the petitioner and has therefore caused great difficulty in deciding it and coming to the truth. The petition itself had been very badly drafted and there are many defects in it. I have not taken a very strict view of the pleadings in this case as in my opinion in election cases it is not a matter between a party and party but is a matter of public importance inasmuch as all the electors are interested in the result and in fact it is the duty of the Tribunal to see that facts are allowed to come in and not excluded out of consideration, particularly in a case where the allegation is one of extensive prevalence of corrupt practice. I have, therefore, approached the case from a liberal point of view.

45. I shall deal with issue No. 6 which relates to undue influence alleged to have been exercised by respondent No. 1. It is said that respondent No. 1 is a very influential person and by the exercise of that influence he collected a large number of ballot papers which had been sent by post to the various electors in the constituency. It is further alleged that he and his workers and agents after collecting them got the ballot papers marked and attested at Kanpur. The question to be decided is whether the collection of unattested and unmarked

ballot papers by the respondent and his agents and workers and subsequently marking them as the respondent wanted, amounted to undue influence under the Representation of the People Act. The definition of undue influence is given in Section 123(2) of that Act. It reads as follows:—

"(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of a candidate or his agent, or of any other person with the connivance of the candidate or his agent, with the free exercise of any electoral right;"

There are two provisos added to this definition. The first proviso (a) begins with the words—

"without prejudice to the generality of the provisions of this clause,"

and then goes on to say that any one who "(i) threatens any candidate or any elector or any person in whom a candidate or an elector is interested, *with injury of any kind* including social ostracism and excommunication or expulsion from any caste or community; or (ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause;".

46. It is clear that the generality of the definition of undue influence is not taken away by these provisos. It has been argued by the learned counsel for the petitioner that the provisos are only illustrative and do not take away the generality of the definition of undue influence. I agree with this argument.

47. It has been proved in this case that Dr. Brijendra Swarup respondent No. 1 is a very influential person. I may say that during the arguments of this case his learned counsel said that he was an influential person but he did not exercise undue influence over the electors and he sought in his arguments to make a distinction between due influence and undue influence. His argument was that a person who has influence is entitled to use that influence to persuade voters to vote for him at an election and it is only when he exercises undue influence that it becomes a corrupt practice. This proposition of the learned counsel for the respondent cannot be disputed. In the present case I am of the opinion that the collection of ballot papers from the electors and marking them as the respondent desired and getting them attested by persons of his choice, was on account of not due influence but undue influence exercised on the electors.

48. The voting in this constituency was by postal ballot and the rules made under the Representation of the People Act provide that the Returning Officer shall send the ballot papers to the electors in envelopes with instructions etc. I will not quote the various rules but I shall refer to rules 65, 66 and 67 onwards. The gist of these rules is that when an elector receives ballot paper he *shall* record his vote thereon and sign the declaration before an attesting officer. He shall then place the ballot paper in the envelope supplied by the Returning Officer, close the envelope and place it in the cover and send the cover to the Returning Officer within the time prescribed. The words used in these rules are *'shall.'* It has been argued on behalf of the petitioner that this *'shall'* is mandatory and it is the elector who should do all these things. It has been argued on behalf of the respondent that the word *'shall'* here is not mandatory but directory and the elector is entitled to have this done by any other person. It has been argued by the learned counsel for the respondent that even if ballot papers were collected and marked by the respondent or his workers and agents the mechanical act of marking may be by the respondent or his workers, but if the ballot papers were given voluntarily, it did not take away the free exercise of the franchise by the electors. In support of this contention the learned counsel for the respondent has referred to Madras case reported in Hammond Election Cases, 1920-35, pages 485-488. That was an election to the Council of State held in 1926. I have carefully perused the judgment of that case but with the greatest respect I beg to differ from the conclusion arrived at by the learned Commissioners in that case and I shall give my reasons for dissenting from that judgment.

49. It appears that Diwan Bahadur Sir S.R.R. Annamalai Chettiyar, the respondent in that case, through his workers and agents collected voting papers from a large number of voters, brought them to Madras and under the instructions of the respondent they were marked giving the first preference to himself

(Respondent) and further first and second preferences were marked according to the desire of the respondent. On these facts which were assumed for the purpose of that case to be correct, it was argued by the petitioner's counsel in that case that the collection of the ballot papers by the respondent interfered with the free exercise of their franchise by the voters and that there had been no free election by reason of the large number of cases in which undue influence had been exerted by and on behalf of the respondent.

50. The learned Commissioners in that case divided the allegations into two parts, the first relating to the collection and marking of the ballot papers in favour of the respondent himself and the other being the marking of the preferences by the respondent on the said ballot papers. Regarding the first class of cases, the learned Commissioners in their judgment said as follows:—

> "We are not satisfied that in the first class of cases it can be said that there had been any interference with the free exercise of electoral right. It may be that a voting paper which is marked not by the voter but by somebody else is invalid as a vote, but if the voter permitted the marking to be done by somebody else and the vote is marked in favour of the person for whom he expressed his intention to vote, it is difficult to see how the freedom of voting had been interfered with".

They further said—

> "We are not prepared to hold that the mere fact of somebody other than the voter putting in the mark on the voting paper itself amounts to an interference with the free exercise of the voter's electoral right, irrespective of the question whether or not the mark was put in conformably to the wishes of the voter."

Regarding the second type of cases the learned Commissioners observed that it had caused them greater difficulty, but they say—

> "But we are prepared to assume for the purpose of arguments that such conduct may amount to undue influence".

They however held that for the purposes of that case it would not affect the election of the returned candidate because the persons against whose names preferences were marked by the respondent had not been returned and were unsuccessful. This result was possible because according to the law then in force it was the corrupt practice committed by the returned candidate which will be looked into in order to decide the question of his election. I may note here that the law enacted in the Representation of the People Act 1951, is different. Section 100 is divided in two parts. Sub-section (1) of Section 100 deals with cases where the Tribunal is entitled to declare an election to be *wholly void;* whereas Sub-section (2) deals with cases where the Tribunal has to declare the election of the *returned candidate to be void.* This distinction was not present in the law when the Madras Case referred to above was decided and this is the most important distinction which has to be borne in mind in accepting the decision of the Madras Case for our guidance in the present case.

51. The petitioner's Counsel has produced before us a book named 'the Indian Candidate and Returning Officer' by Hammond, published in 1926. There at page 329 appendix II B rules regarding voting by post are given; I shall quote the relevant rules regarding that matter.

Rule 1 says that the Returning Officer shall send by registered post to each elector a ballot paper etc.

Rule 2 says that on or before such day as may be appointed by the Local Government in this behalf, but not later than 5 P.M. on that date, each elector desirous of recording his vote shall sign his declaration on the back of the ballot paper *in the presence and at the office of an attesting officer and the* attesting officer shall thereupon attest his signature.

Rule 3 says that the elector shall then proceed to a place set apart for that purpose by the attesting officer and there shall record his vote on the ballot paper in accordance with the instructions therein and after placing the ballot paper in an envelope and closing the same *shall deliver it to the attesting officer.*

Rule 4 provides for cases where the elector himself is unable to mark the ballot paper on account of physical defect or illiteracy.

Rule 5 provides that the *attesting officer shall as soon as* possible after 5 p m of the day appointed as the latest date for the attestation of ballot papers, *despatch* all the envelopes so delivered to him to the Returning Officer by registered post in a packet securely sealed with his official seal and shall also enclose a list of the electors whose ballot papers he has attested.

In the face of these rules the collection of ballot papers by the respondent in the Madras case was altogether illegal and the facts given in the judgment do not disclose how these ballot papers were sent to the Returning Officer It does not appear that the ballot papers were sent by the attesting officer There was a flagrant disregard of the rules by the respondent and I am unable to see how in these circumstances the ballot papers, rather the votes, were ever considered. I am unable to agree with the decision of the learned Commissioners that the mere act of marking the preferences for the respondent by the respondent himself is of no consequence In my opinion it will be putting too innocent and charitable an interpretation on the conduct of the respondent in that case. I am unable to hold that when the candidate collects ballot papers in utter disregard of the rules and marks them himself, it is no interference with the right of franchise as provided in the rules. I may note also that the learned Commissioners in that case divided the marking of ballot papers into two parts, one legal according to them and another illegal and amounting to corrupt practice, they accepted the good part and rejected the illegal part. In my opinion this approach is incorrect and it is not permissible to divide one transaction like this and hold that it was good and valid in law.

52. I shall now consider the facts of the present case in order to decide the question of undue influence. The respondent No. 1 is admittedly President of the Bar Association at Kanpur and is an Advocate of about 55 years standing. He has been a member of the Legislative Council for about 10 years. He was Chairman of the Municipal Board of Kanpur He is President of the Trust Managing Committee D A V. College He is President of the P.P N. Intermediate College, Dean of the Faculty of Law of Agra University since 1929, Head Examiner in Law of the Agra University. His relations and friends, for example Sri Shivakumar Lal Srivastava and Principal Kalka Pd. Bhatnagar are members of the Intermediate Board of U.P. and one of his sons is a member of Intermediate Board of U.P. and Sri Kalka Pd. Bhatnagar is an important member of the Agra University. I need not give more details as my learned colleagues have done so in their judgment. As I have stated above, it is not denied that he is an influencial person. It is said on behalf of the petitioner that a large number of examinarships in the Agra University and Intermediate Board were in his gift and there is some evidence that examinerships were offered to some electors from whom ballot papers are said to have been collected. When I deal with the individual witnesses I shall discuss this matter further. There is no doubt that if the respondent No. 1 wished he could appoint examiners for the various examinations in the Intermediate Board and in the Agra University It is also apparent that he could take away examinerships if he so wished. It is in this sphere of influence that he collects the ballot papers The petitioner's case is that this influence was misused by the collection of ballot papers. If it was a mere exercise of *'due'* influence, it was not necessary at all to collect the ballot papers because on account of his influence and on account of his canvassing the voters would vote for him. But the collection of ballot papers takes it beyond the scope of *'due'* influence and becomes *'undue'* influence I have already given the gist of the rules and I may repeat again that it is the duty of the elector to mark the ballot paper according to their own desire and send them to the Returning Officer. This is the mandatory provision of the rules When a candidate asks a voter to act against the provisions of the rules and himself violates those rules, it could not be taken to be an innocent act on the part of the candidate and his agents The ballot papers are evidently collected because the candidate wants to have a control over the voting, he puts marks on the ballot papers as he desires and then gives it to the Returning Officer. Therefore as soon as he collects the ballot paper he takes it beyond the control of the elector to vote as he desires and takes away his right to change his mind and vote for another candidate or not to vote at all The elector evidently submits to it because of the threat, inducement or advantage offered to him as in ordinary circumstances he would not part with the ballot paper. The demand by the candidate or his agent of the ballot paper from any voter is very improper to say the least. Jagat Narain in his book on Law of Elections, 1937 Edition in noticing the Madras Case referred to above, namely Hammond Election Cases, page 484, said as follows:—

> "The system of voting by post has been prescribed only in a case of constituency the electors of which are literate. It was at an election in the Council of State in 1925 that the defects of the postal system of voting were brought to notice".

Then he refers to the Madras case mentioned above. There is no doubt that this system of postal ballots can be abused and in my opinion has been abused in this case. I am of the opinion that if ballot papers were collected as it is said that they were collected, it was under undue influence and the electors were not able to exercise their right of franchise as defined in section 79(d) of the Representation of the People Act. I may add that the law and the rules prescribed a certain procedure to be followed in recording votes by the electors and if this procedure is not followed and is disregarded then it will not be recording vote in the manner prescribed by law. In the present case ballot papers were collected unattested and unmarked and subsequently the candidate or his agent put the marks and got them attested. This is not the prescribed procedure for recording votes in postal ballot system. The electors did not therefore vote according to the prescribed procedure and in law they did not express their intention in the manner prescribed, and an intention not duly expressed is in the same position as an intention not expressed at all. *Vide* A.I.R. 1955, Supreme Court, page 233 at page 248 paragraph 35.

53. It has been argued by the learned counsel for the petitioner that if a candidate or his agent were to collect ballot papers from voters in ordinary election from polling station and if such voters did actually and voluntarily hand over their ballot papers to the candidate who later on put them in the ballot box of his own, it will amount to major corrupt practice as provided in section 123 of the Representation of the People Act and the taking away of ballot papers from the voters where there is postal ballot system is almost tantamount to removal of ballot paper by the candidate or his agent and putting it in the ballot box themselves. This argument is based on an analogy and may not be exactly applicable in this case. Unless the legislature provides that collection of ballot papers amounts to corrupt practice, I am unable to hold on this analogy that mere collection of ballot papers is a corrupt practice. In the present case however as I have stated above I have no doubt in my mind that the collection of ballot papers was due to undue influence and I hold accordingly.

54. I may here just refer to the provisions of postal voting in England as enacted in the Representation of the People Act, 1949. This method of voting is for those persons only who are unable or likely to be unable to go in person to the polling station for various reasons given in that statute. It is also applicable to persons voting as proxies for service voters. The procedure is similar to the procedure as provided in the Indian Act. Under English rules ballot papers are issued by the Returning Officer with instructions printed on them and instruction No. 4 says—

> "Vote by marking the ballot paper on the right hand side across opposite the name of the candidate for whom you vote."

Rule 5 says—

> "Immediately after voting you must place the marked ballot paper in the enclosed small envelope marked 'A' and fasten it up. You must then place the envelope marked 'A' together with a declaration of the identity in the larger envelope marked 'B' addressed to the Returning Officer and despatch it by post without delay".

There also the rule enjoins that the voter must mark the ballot paper and must close it in the way described above and send it to the Returning Officer.

Schofield in his book on Local Government Elections, 3rd Edition, 1934 at page 224 says as follows:—

> "A ballot paper sent to a person for the purpose of voting by post shall not be deemed to be duly returned unless it is returned in the proper envelope so as to reach the Returning Officer before the close of the poll and is accompanied by the declaration of the identity duly signed and authenticated."

It will thus appear that great importance has been attached to the returning of the ballot paper to the Returning Officer in the proper envelope and in the proper manner prescribed by the rules, otherwise it will not be deemed to be returned. I have referred to this only to show that this special kind of voting by postal ballot must conform to the rules and there should be no laxity about it.

55. I shall now deal with the question whether the respondents collected ballot papers unattested and unmarked and later on marked them as they wished and delivered them to the Returning Officer. The decision on this point is not free from difficulty, particularly because the case has been very badly conducted and mismanaged on behalf of the petitioner. On account of his negligence his case was

prematurely closed and he could not produce all the evidence that he wanted to produce. Further his absence from court enabled the respondent No. 1 to produce in one day 7 witnesses who were not cross-examined. The state of oral evidence is therefore rather unsatisfactory. I have however dealt with such evidence as has been produced by the petitioner and the respondent regarding this matter of collection of ballot papers and delivering them to the Returning Officer. I shall take up the question of collection first. But before I do so it is necessary to consider one aspect of the case which is of some importance. The case set up by the petitioner is that the election has not been a free election by reason that the corrupt practice of bribery and undue influence extensively prevailed at the election. The argument of the petitioner's learned counsel is that where the allegation is of extensive prevalence of corrupt practice, the petitioner is entitled to give evidence of corrupt practice generally alleged by him even if the names of persons on whom corrupt practice was exercised or the place where it was exercised are not specifically alleged in the petition. Two cases have been cited by him on this point. One of these cases is reported in 3 Election Law Report, page 71, where an Election Tribunal held as follows:—

> "In the list of corrupt practices accompanying the election petition in which allegations of undue influence and threats of ostracism on voters have been made, it is not incumbent on the petitioner to state the names of the voters on whom these alleged practices have been practised".

56. Another case cited by the learned counsel for the petitioner is reported in Doabia, Vol. I, page 3, point No. 13 where a similar opinion had been expressed regarding names of places not being given in the petition. On the authority of these cases, the petitioner's learned counsel has argued that the omission of the names of certain colleges where collection of ballot papers were made, the names of which institutions are not given in the petition, does not preclude the petitioner from giving evidence of corrupt practice practised in other institutions also. It seems to me that for a fair trial of this case it will not be proper if such evidence is excluded from consideration. Where these witnesses were produced no objection was taken and they were allowed to be examined before the Tribunal. The witnesses were cross-examined and the respondent No. 1 has produced witnesses to rebut the evidence of the petitioner so given. In this state of affairs, it will not be doing justice to the case if this evidence is excluded. The argument of the respondent's learned counsel on this question is based more on technicality than on substance. The case is not only between the petitioner and respondent but it is in the interest of the voters of the entire constituency. I am therefore of the opinion that in the interest of justice I will take into consideration that evidence also.

57. Collection of ballot papers have been made according to the petitioner—in the following places:—

1. In the Bar Association and the Court Compound of Kanpur.
2. S. D. College, Kanpur.
3. K. K. College, Kanpur.
4. D.A.V. College, Kanpur and
5. from certain individuals in Arya Nagar and other places in Kanpur.

I shall take up these one by one. Regarding collection of ballot papers in the Bar Association and Court compound, there is the statement of the petitioner who says that he saw them being collected by the respondent No. 1 who was accompanied by his sons Sri Devendra Swarup and Sri Virendra Swarup. In cross examination he mentions a few names of lawyers from whom such collection was made. There is no other oral evidence on this point by the petitioner. In fact the argument of the learned counsel for the respondent is that no lawyers have been produced and the list of witnesses filed by the petitioner does not contain the names of any lawyers named by the petitioner in the witness-box. It is true that the petitioner has not produced any lawyer, but the difficulty in his way was that he could not produce any lawyer, as the respondent No. 1 was the President of the Bar Association. He relies however on certain attestation slips which he has shown to this Tribunal. In rebuttal the respondent has produced one witness namely Sri Gokul Prasad Khanna R.W.1. This gentleman is an Advocate and Joint Secretary of the Bar Association at Kanpur. In his statement this witness says that his ballot paper was not collected by the respondent but that he signed the ballot paper, got it duly attested by some Civil Judicial Officer and sent it to the Returning Officer. There is no cross-examination of this witness because the petitioner and his counsel were absent. But on behalf of the petitioner the attestation slip of this witness has been produced. It appears from that slip that Sri Gokul Prasad Khanna's ballot paper was attested by Sri Surendra Mohan Saxena, one of the persons who is alleged to be the worker and helper of respondent No. 1. The slip further shows that this Advocate was identified by one Kahan Chand who is a clerk in the D.A.V. College,

Kanpur. The evidence of this witness is therefore not acceptable as disproving collection and it is further worthy of notice that an Advocate of the Kanpur Court who is Joint Secretary of the Bar Association has to be identified by a clerk working in the D.A.V. College. It seems to me that the fact that a person under the influence of the respondent No. 1, namely Sri Surendra Mohan Saxena, attests this witness's ballot paper and the further fact that he is to be identified by a clerk of the D.A.V. College, shows that it will not be safe to rely on the uncross-examined statement of this witness. The respondent No. 1 has of course denied collection generally, but he is an interested party. This is the evidence regarding collection of ballot papers in the court compound. It is argued on behalf of the respondent that regarding collection of ballot papers from lawyers in Kanpur, there is no direct evidence as to the inducement given to these lawyers. It has been said by the petitioner that the inducement was that they will be made lecturers in law in D.A.V. College, Kanpur, they will be given examinerships in law in the Agra University through the influence of respondent No. 1. There is no direct evidence about it except what the petitioner has said in this matter. It is not unlikely, in fact I think it is very likely, that lawyers would like to have law lecturerships and examinerships in the Agra University, and if that be so, there was no doubt undue influence exercised on them and by that undue influence ballot papers were collected from the lawyers. There is evidence that two lawyers of Kanpur *viz.* Sri Sree Kishen Kapur and Sri Ganguli were appointed law lecturers in the D.A.V. College in August or September 1953.

58. I shall now take up the question of collection in the S. D. College, Kanpur. The evidence on this point is of the petitioner who has no personal knowledge, but he says what he heard about this collection. The positive direct evidence on this point is that of Sri H. N. Misra P.W.3. This witness is on the staff of this College in the English Department. He says that he was an elector and about 30 members of the staff of this College were electors in this constituency. He says most of these electors gave away their ballot papers to respondent No. 1 personally, but that he refused to deliver his ballot paper. He further says that Dr. Brijendra Sarup himself came to the College to collect the ballot papers. It is no wonder if he himself came to collect because there are about 30 voters in this College. This witness says that ballot papers were handed over to Dr. Brijendra Swarup in his presence. He says that several members of the staff canvassed for him, the most prominent persons being Sri Ajodhiya Nath Sharma, Professor Sharda Pd. and Professor Srivastava. He further says that the canvassers canvassed for him by telling the members of the staff that it was in the interest of the College that the electors should vote for Dr. Brijendra Swarup and should make over their ballot papers unattested and unmarked. He further says that these canvassers told the electors that they can get examinerships through Dr. Brijendra Swarup only because he was very powerful in the Agra University and the U.P. Intermediate Board. These canvassers were not only examiners but were also candidates for convenership for Board of Studies of the Agra University. This witness further says that Dr. Brijendra Swarup himself approached him for his vote and asked him to give his ballot paper unattested and unmarked. But this witness refused, whereupon Dr. Brijendra Swarup remarked that perhaps he did not care for examinership. The witness replied that he certainly did not care for examinership if it came to him by the surrender of his democratic right. This evidence if believed goes the whole length of proving the collection of ballot papers by the respondent and his workers, the inducement that was given to these electors and the threat given to this witness by Dr. Brijendra Swarup himself. This witness says that Dr. Brijendra Swarup came to the room of the Principal of the College Sri L. C. Tandon who had called some members of the staff in his room and he himself was one of them. He says further that Principal Tandon is of the party of Dr. Brijendra Swarup and belongs to his caucus.

59. The evidence of this witness has been challenged by the respondents' counsel on the ground that there is no corroboration. No other member of the staff of this College has been produced by the petitioner. It is also argued that the name of this witness finds place in the manifestos of the petitioner and of Sri B. L. Vaish. It is also argued that he is a member of the Managing Committee of K. K. College of which Pt. Brahma Nand Misra is the President and Pt. Brahmanand Misra is a supporter of the petitioner. To contradict the evidence of this witness the respondent No. 1 has produced two witnesses namely Sri L. C. Tandon R.W.5 and Sri Ajodhiya Nath Sharma R.W.6. Sri L. C. Tandon says that he was the Principal of S. D. College Kanpur. He was an elector but was not interested in any candidate and did not support any one. He denies that Dr. Brijendra Swarup ever came to the College. He also denies that teachers of that College gave their ballot papers to Dr. Brijendra Swarup in his presence unattested and unmarked. He further says that it is not a fact that he exercised undue influence on Sri Sheo Narain Verma a member of the staff of that College. He denies in

fact everything that has been said by Sri H. N. Misra. This witness was not cross-examined but we must take into consideration that he was principal of a College and had to deal with the U.P. Intermediate Board over every matter in connection with the College and Sri Shiva Kumar Lal Srivastava and Principal Bhatnagar, who were of the same caucus as Dr. Brijendra Swarup, were influential members of the Board and it is not surprising that he would come forward to support the respondent No. 1 in this case. He is still the Principal of that College and has to deal with the members of the Intermediate Board over which body respondent No. 1 has great influence through Sri Shivakumar Lal Srivastava, Sri Bhatnagar and his son who was member at that time. I have no doubt in my mind that Sri L. C. Tandon cannot go against respondent No. 1 and displease him.

60. The other witness produced by the respondent No. 1 to contradict Sri H. N. Misra is Sri Ajodhiya Nath Sharma. He is on the staff of the S. D. College and was Head of the Hindi Department. He has been a member of the Board of Studies in Hindi in the University of Agra. He says that he was not a worker or canvasser of respondent No. 1. He further says, "I do not know if Dr. Brijendra Swarup visited our College in the election days". He further says, "I was never called by the Principal for any such purpose". He denies that he went to the Principal's room with Sri H. N. Misra. He further denies that he collected any unmarked and unattested ballot papers in this election. In common with other witnesses of the respondent this witness was not cross-examined because the petitioner and his counsel were absent. In the absence of any cross-examination, the petitioner has been able to show that the attestation slip of this witness was attested by Sri Surendra Mohan Saxena who is the worker and of the party of respondent No. 1. It is argued by the learned counsel for the respondent that the statement of Sri H. N. Misra is unworthy of credit. It is argued that there is no corroboration of the statement of this witness. It is true that no other witness of this college has been produced on behalf of the petitioner but the respondent chose to produce two witnesses of this College to contradict him and they have done so by denying that respondent No. 1 ever came to this college. There is thus oath against oath and I am prepared to accept the statement of Sri H. N. Misra as true. The other attack made against the statement of this witness is that he signed the manifesto of the petitioner and Sri B. L. Vaish. Regarding this matter the witness says that those persons did bring out leaflets containing his name but it was without his previous consent. He denies that he ever worked for those candidates though he did not contradict in the press his name being put in the manifesto. It is not unusual to find in election manifestos names of large number of persons who are not real signatories but their names are put in by the candidate himself even without their consent. The original of the manifesto has not been produced to show that it bears the signatures of Sri H., N. Misra. Under these circumstances this argument does not appeal to me as enough to discard the evidence of this witness. Another attack on the evidence of this witness is that he is a member of the Managing Committee of the K. K. College and that Sri Brahma Nand Misra is the president of the Managing Committee. This argument of influence of Sri Brahma Nand Misra on Sri H. N. Misra is too farfetched to be considered in this case. This witness says that he was an examiner in the Agra University as well as in the U.P. Board. He further says that at the time of giving his evidence he was examiner in the Intermediate Board only and not in the Agra University. He also stated, "the last of my terms was of two years only namely 53 to 54, and I was not appointed an examiner in 1955". The usual terms are of three years and the witness desires to hint that his term of three years of examinership was cut down by one year because he was against giving his ballot paper to respondent No. 1. This witness has said in cross-examination that "it was on the first day of his (respondent No. 1's) visit to the College that on my refusal to part with my ballot paper he observed that perhaps I did not care for examinership". In this case therefore it appears that there was a threat by respondent No. 1 to this witness that he will loose his examinership. As I have said above the suggestion is that he was not appointed examiner for 1955. It may be noted here that examiners are appointed at least a year before the examinations are held. Considering the entire facts and evidence regarding this matter of the S. D. College I am prepared to believe that respondent No. 1 did visit that College and collections of ballot papers were made as stated by Sri H. N. Misra unattested and unmarked and made over to Dr. Brijendra Swarup.

61. I shall now take up the case of the K. K. College. The evidence produced by the petitioner regarding this College is of Sri Shivalok Ram P.W.6. This witness is a clerk in that College. He states that he had been clerk there since 1941. In 1952 he was Head Clerk and Sri Krishen Kumar Tewari was the Principal. During the election days in 1952 Dr. Brijendra Swarup came to the College in his presence and this witness was present in the Principal's room when respondent No. 1 had talk with the Principal and during that talk respondent No. 1 requested

him to make his teachers vote for him and asked him to call the teachers and ask them to make over their ballot papers to him. The Principal agreed to help him. The respondent No. 1 again visited the College the following day and this witness says that in his presence some ballot papers were handed over to respondent No. 1. This witness further says that on the first day, two of the teachers Sri H. N. Shukla and Sri G. P. Tripathi refused to hand over their ballot papers, whereupon the Principal asked them not to refuse because it was in the interest of the College. The interest of the College as appears from the cross-examination of this witness is that in 1952 the K. K. College was affiliated upto the Intermediate classes and the authorities of the College desired that it should be raised to a Degree College. It appears from the evidence of this witness that an attempt was made for that purpose and a letter was actually sent to the Registrar requesting him to send an application form for the purpose of making a request to the University to raise it into a Degree College. The witness further says that at the time of his giving evidence in October 1955 it was still an Intermediate College. This is the only evidence on behalf of the petitioner regarding this College. There were 35 or 40 electors in this college and it is not unlikely that the respondent No. 1 would attempt to collect ballot papers from this College as well. This witness has named two persons who at first were unwilling to part with the ballot papers but subsequently did agree to the Principal's request. They are Sri G. D. Avasthi and Sri S. N. Shukla. The respondent No. 1's learned counsel has argued that these witnesses should have been produced. They were named in the list of witnesses but they have not been produced. It seems that these persons having consented to part with their ballot papers would not now come forward to go against the respondent No. 1 and against the interest of their College. The respondent No. 1 has produced Sri K. K. Tewari the then Principal of the College. He is R.W.9 and an argument is based that as against this clerk, the Principal should be believed. This witness Sri K. K. Tewari has denied that respondent No. 1 ever came to his college during the election days. He also denies that he is making this statement in favour of respondent No. 1 because of any ill-will towards Pt. Brahma Nand Misra who according to him suspended him from June 1954. I feel some hesitation in accepting the statement of this witness. This witness denies that in 1952 or at any other time any application was made to the University to raise the K. K. College to a Degree College. On being further pressed he says that it was possible that a letter may have been sent to the Registrar of the Agra University requesting for an application form for raising the status of the College, but he did not remember about it. The Head Clerk of the College Sri Sheolok Ram says that a letter of request was sent to the Agra University for a form. It does not appear however from the record that an application was actually sent to the Agra University. There is no doubt that the management did desire to raise the status of the College to a Degree College in 1952. It is inconceivable that the Principal would have no knowledge about it and he will not remember about this effort to raise the status of the College. This suppression of truth is due to the fact that it is the case of the petitioner that one form of inducement offered by respondent No. 1 was to raise the status of the College and it was for this reason that representation was made to the teachers that it was for the good of the College that they should part with their ballot papers. There is one other matter which makes me believe that this witness is siding with respondent No. 1 in this case. He was asked in cross-examination regarding the influence of Dr. Brijendra Swarup, Sri Shivakumar Lal Srivastava and Sri Kalka Pd. Bhatnagar in the Agra University and U.P. Board of Education and in the educational institutions of Kanpur. This witness who lived in Kanpur and was the Principal of a College and who had dealt with U.P. Intermediate Board and the Agra University, had the temerity to deny the influence of respondent No. 1 and others named above. It is inconceivable that he would not know who the persons in power were in the Intermediate Board and the Agra University. He however had to admit that when he was Principal of the K. K. College, Sri Shivakumar Lal Srivastava, Sri Paripurna Nand Verma and perhaps Sri Kalka Pd. Bhatnagar were members of the U.P. Intermediate Board and he must have known that Sri K. P. Bhatnagar was the Principal of the D.A.V. Degree College and Sri Shivakumar Lal was the Principal of the D.A.V. Inter College at Kanpur and Sri Paripurna Nand was an influencial member of the Intermediate Board along with them and they were all friends of respondent No. 1. This deliberate suppression of the influence of respondent No. 1 and others mentioned above takes away from the value of the evidence of this witness and I have great hesitation in accepting his evidence as altogether disinterested. Respondent No. 1 has also produced Sri Shivakumar Lal R.W.2 who simply denies that he ever went to the K. K. College for collection of votes or that he offered any inducement to anybody. I shall deal with the evidence of this witness in another connection and I shall not discuss it now. Suffice it to say, that he is of the party and under the influence of respondent No. 1 and he has been his worker in this election.

62. These are the only three witnesses produced regarding the K. K. College. There is oath against oath and I am prepared to accept the statement of Sri Sheolok Ram P.W.6. I shall now take up the case of the D.A.V. College Kanpur. This College is mentioned in the petitioner's pleadings and schedule. The evidence on this point is that of the petitioner himself who states that such collection was made in the D.A.V. College. No other witness of the D.A.V. College has been produced and it would have been a vain attempt on the part of the petitioner to produce any member of the staff of the D.A.V. College to support his case and go against the interest of respondent No. 1 who has full control over the D.A.V. College. The respondent No. 1 denies having gone there in connection with the election. He does not deny that he did not go for any other purpose and it is possible that he may have gone in connection with management of the College as he is President of the Trust managing that College. To rebut this evidence the respondent has produced Sri Sharda Pd. Saxena, Vice Principal, D.A.V. Degree College Kanpur. This witness has stated that *within his knowledge* Dr. Brijendra Swarup never visited the D.A.V. College in connection with his election. Had he done so, he would have known of it also. This witness bases his evidence on so far as he had knowledge of it and is unable to give a definite denial. This witness is under the control of respondent No. 1 and is interested in him. I do not therefore attach value to the evidence of this witness who had not been cross-examined either because of the absence of the petitioner and his counsel. The respondent has also produced Sri M. M. Pandey a member of the staff of the D.A.V. Degree College, Kanpur. This witness was a lecturer in Politics those days and is now officiating as Head of the Department of Politics. This witness says that he got a ballot paper from the Returning Officer. He filled it up and sent it to the Returning Officer by registered post. He further says that he got that ballot paper attested but he does not remember who the attesting officer was. He had been produced only to show that no influence was exercised on him on behalf of respondent No. 1 and his ballot paper was not collected by him. He is of the staff of the D.A.V. College and as such is under the influence of respondent No. 1. Further, it appears from an examination of the attestation slips to which our attention has been drawn that Sri M. M. Pandey identified persons whose ballot papers were attested by Sri R. P. Srivastava, Principal P.R.N. Inter College Kanpur, a person under the influence of respondent No. 1. It is therefore difficult to believe the testimony of Sri M. M. Pandey R.W.3 and Sri Sharda Pd. R.W.7 as they are interested in respondent No. 1 and are under his control. During the course of arguments it was said that the staff of the D.A.V. Degree College consists of about 200 persons of whom about 100 are graduates and it is very natural for the respondent who had influence over the staff of this College to collect their ballot papers and to be sure of their votes in his favour and that of Sri Virendra Swarup in whom he was interested as his son and possibly Sri Sharda Pd. It is the petitioner's case that these three were fighting the election together though there is no clear evidence about it. The respondent however admitted that he was interested in Sri Virendra Swarup's election as he was his father. I have therefore come to the conclusion that the ballot papers of the staff of the D.A.V. College were collected by the respondent No. 1 and his agents, and workers particulraly Sri Shivakumar Lal and Sri Bhatnagar the Principal of the Degree College. It is worthy of note that Sri K. P. Bhatnagar was named a witness and time was taken to produce him before this Tribunal as he was busy with the Agra University work. After the examination and cross-examination of respondent No. 1, the counsel for the respondent decided not to produce him and he has not been produced in this case. This fact is significant because he was a very important person and belonged to the staff of the D.A.V. College. In fact, he is its Principal. The omission to produce him is therefore significant. I would therefore hold that ballot papers of the staff of the D.A.V. College were collected and they were attested and marked by respondent and his workers.

63. I shall now deal with collection of ballot papers from individuals and I may begin with Sri Sheo Narain Verma who was Professor in S. D. College, Kanpur. His brother Sri Ram Narain Verma is a teacher in the D.A.V. Inter College, Kanpur. This witness says that he gave his ballot paper unattested and unmarked but signed by him to his brother Sri Ram Narain Verma who said that he wanted the ballot paper for respondent No. 1. He further says that his brother gave this ballot paper to respondent No. 1 in his presence at his house in Arya Nagar. Respondent No. 1 was present in his car outside the house and his brother handed over the ballot paper to him just then. He further says that his brother handed over to him 5 or 6 other ballot papers. He also adds that left to himself he would not have handed over ballot paper for the use of respondent No. 1. In cross-examination he has been asked questions about his brother Sri Ram Narain Verma

who is no longer in the service of the D.A.V. Inter College. He denies the suggestion made by the counsel for the respondent No. 1 that his brother was dismissed after 25 years of service in that College. The witness says that he left that institution for better prospects and is now Principal of the Intermediate College at Bijnore. He says that the ballot paper received by him was handed over to respondent No. 1 only 2 or 3 days after he had received it from the Returning Officer. Coupled with this statement we have the fact that this witness's ballot paper was attested by Sri R. P. Srivastava. It also appears that Sri Ram Narain Verma's ballot paper was also attested by the same gentleman. This is the entire evidence on collection of ballot papers from this witness. The argument of the learned counsel for respondent No. 1 regarding this witness is that he never spoke to the petitioner about this incident. Then a point is raised that the name of this college is not mentioned in the petition or the schedule and it is not shown what undue influence was exercised on him. Also it is argued that Sri Ram Narain Verma has not been produced in this case and the respondent denies having gone to Arya Nagar to make collection from this witness. It is also said that this witness gave the time of the visit of respondent No. 1 at the end of April in his examination-in-chief. I have however already stated that in cross-examination he has definitely said that he handed over the ballot paper to Dr. Brijendra Swarup 2 or 3 days after he received it. There is thus no contradiction regarding this matter. Regarding undue influence in this case the suggestion is that Sri Ram Narain Verma was working in the D.A.V. Inter College at that time and was under the influence of respondent No. 1 and was making collection evidently under his orders. As a refusal of Sri Sheo Narain Verma to part with the ballot paper might entail injury to his brother, he consented to give it to the respondent No. 1. This evidently comes under undue influence as defined in the Act.

64. I shall now deal with the case of Srimati Jainti Tewari P.W.5. She is a respectable and educated lady and I was impressed by her frank statement. She is a B.Sc., M.A., and B.T. She also holds a Diploma of Montessori Teaching. She says in her statement that she is Principal of Jwala Debi Inter College Kanpur but is under suspension from January 1952. She states that one day Dr. Brijendra Swarup came to her house in Arya Nagar and asked her to hand over her ballot paper to him unattested and unmarked but signed by her. She says that her husband was there and with his consent she did hand over her ballot paper to respondent No. 1. She further says that the management of Jwala Debi Inter College is in the hands of Sri Paripurna Nand, Dr. Brijendra Sworup, Principal K. P. Bhatnagar, Sri Shivakumar Lal Srivastava, Sri Sharda Pd. Saxena and others. She further says that she was suspended on 12th January 1952 and the charge-sheet was handed over to her on 18th January 1952 and she filed a suit against the management on 19th January 1952. The defendants in that suit were respondent No. 1 and other members of the managing Committee mentioned above. When respondent No. 1 asked for the ballot paper, the suit was pending and it is still pending. This witness says that when she handed over the ballot paper to respondent No. 1, he assured her that he would have settled to her satisfaction the dispute that had been going on between the authorities of the College and herself. It is very natural that after the institution of the suit she would like that the matter may be settled and the suit compromised, this was the inducement given to her for parting with the ballot paper. This witness gives a story of the election to the U.P. Intermediate Board held in September-October 1951. In this election Sri Shivakumar Lal Srivastava was a candidate; he wanted the witness to give to him her ballot paper for that election. She refused to part with the ballot paper but assured him that she would vote for him. She says that she did vote for him but as she had refused to part with the ballot paper, Sri Shivakumar Lal thought that she had voted against him. It is after this refusal that she was suspended as stated above. She felt that Sri Shivakumar Lal did not believe her statement when she said that she had voted for him. To assure him that she did vote for him. She wrote a letter to the Secretary Intermediate Board to give her in writing for whom she had voted and the Secretary did send a reply to show that she actually voted for Sri Shivakumar Lal in that election. She brought that letter in court but as that document had not been summoned from her it was not accepted in evidence. But her statement on oath stands and I have no doubt in my mind that her suspension may be due to the suspicion of Sri Shivakumar Lal that she did not vote for him as she refused to part with her ballot paper. I have referred to this incident in detail to show the evils of voting by postal ballot and the abuse which is made of it. This is an indication why voters part with their ballot papers because they fear either an injury or expect some gift or favour from the candidate. From the names of the members of the Management Committee mentioned above, it is apparent that respondent No. 1 and all his supporters were members there. She further says that she approached Dr. Brijendra Swarup some time in May 1952 for the settlement of the dispute but nothing has been done as yet. As I have said above I am prepared to accept the statement of this witness *in toto*.

65. The attack on her statement by the respondent's learned counsel is based on the fact that her husband Sri Manikant Tewari is counsel of the petitioner and he has not been produced in this case to corroborate this witness. The obvious reason for non-production of this witness is that it will afford an argument on behalf of respondent that the evidence of this witness cannot be accepted because he is the husband of witness as well as the lawyer of the petitioner. I do not think that his non-production should detract from the value and weight to be given to the evidence of this witness. Respondent No. 1 has denied that he ever went to her house and it is argued on behalf of the respondent that her college is not named in the petition or in the schedule but she has been named as one of the persons on whom undue influence was exercised. I would therefore hold that collection of ballot papers was made from her in the circumstances mentioned above.

66. Then there is the statement of Sri Nand Kishore Dixit P.W.2. Teacher in Marwari Inter College. I shall not deal with the statement of this witness because Marwari Inter College is not mentioned in the petition or the schedule and this witness was not named in the list of witnesses. The person who was summoned was one Sri R. K. Dixit and it is argued that it was a surprise on the respondent when this witness was produced. In these circumstances it is not proper to put any value on the statement of this witness.

67. The next person who is alleged to have been influenced and whose ballot paper was taken is Sri Riazul Hasan. The evidence of this witness is that one day respondent No. 1 along with Sri Ahmad Husain Magistrate came to his house and asked him to hand over the ballot paper after signing the same but without marking the preferences and without attesting it. He says that Sri Ahmad Husain told him that respondent No. 1 is a candidate in the election and that he should hand over the ballot paper to him (the Magistrate) instead of sending it to the Returning Officer. He told him also that all the Muslims of Kanpur were giving their votes to respondent No. 1 and he should do the same. It is said that Sri Ahmad Husain Magistrate dissuaded him from sending the ballot paper to the Returning Officer himself as Muslim graduates of Kanpur including those of Haleem College had made over their ballot papers to him and thereupon he too gave his ballot paper to him. There is nothing to show in the evidence of this witness why he handed over the ballot paper except what I have stated above. His evidence does not prove to my satisfaction that any threat or inducement etc. was offered to him. I would not therefore rely on the evidence of this witness.

68. I shall now take up the case of Sri Achchuta Nand P.W.9. This witness is a lecturer in Gur Narain Khattri Inter College, Kanpur. He states that one Sri Pratap Choudhari, another lecturer of his College, asked him to hand over his ballot paper to him so that he might give it to Sri Shivakumar Lal. He replied that he would think over the matter. On the following day Sri Pratap Choudhari told him that he was wanted by Sri Shivakumar Lal and he went to see him in the evening. Later on he handed over the ballot paper to Sri Shivakumar Lal without marking any preferences on it and without having his signatures attested by any body. He says that he was an examiner in the U.P. Intermediate Board from 1951 to 1955. He adds that Sri Shivakumar Lal, Sri Sharda Pd. Saxena and Principal Kalka Prasad Bhatnagar are some of the members of the Examination Committee. He also says that he gave the ballot paper to him in the hope that he would be helpful in future. In cross-examination he says that Sri Pratap Choudhari is now on the staff of the D.A.V. Inter College. He also says that he is distantly related to Sri Brahma Nand Misra and is separate from him; but he denies that he has come forward to give evidence on account of him. He also admits that Sri Hira Lal Khanna P.W.8 is a member of the Managing Committee of his College. It is worthy of note that the attestation slip of this witness was attested by Sri Surendra Mohan Saxena who is of the party of respondent No. 1 and further he was identified by Sri M. M. Pandey who is on the staff of the D.A.V. College. To rebut this evidence the respondent has produced Sri Shivakumar Lal who was not cross-examined at all because the petitioner and his counsel were absent. This Shivakumar Lal has been proved to be a worker of respondent No. 1 and a receipt Ext. P6 in the return of election expenses shows that he was paid a sum of money by respondent No. 1 for election work in Allahabad. This witness is alleged to have proposed Sri Virendra Swarup for this election. It was argued that there was dissimilarity between his signature on the nomination paper and other proved signatures. An opportunity was given to him to come and explain but he has not done so. I have reasons to place no reliance on the uncross-examined evidence of this witness. I am unable to act on this kind of rebutting evidence. The respondent No. 1 has suggested that Sri Brahma Nand Misra is a friend and helper of the petitioner. That he is a friend of the petitioner is admitted, but there is nothing to show why he should go out of his way and

take such active interest in the case as to provide witnesses for the petitioner. I do not think that this witness was made to give evidence in this case on account of the influence of Sri Brahma Nand Misra or Sri Hira Lal Khanna and I am prepared to accept the statement of this witness regarding collection of the ballot papers. This finishes collection of ballot papers from individual persons.

69. Before concluding this part of the case I would wish to say that the petitioner has produced a large number of attestation slips and had asked the Tribunal to examine every attestation slip in order to come to the conclusion that collections of ballot papers were made and they were attested and marked by certain persons who were friends and supporters of respondent No. 1. The petitioner's learned counsel has prepared charts to show how many ballot papers were attested by the workers and supporters of respondent No. 1. A perusal of these charts will show that Sri Surendra Mohan Saxena, Principal of Nawabganj Municipal High School attested 416 ballot papers. It is alleged by the petitioner that this gentleman was appointed when Sri Devendra Swarup was Chairman of the Education Committee of the Municipal Board. This witness lives in the school compound in Nawabganj and is known to respondent No. 1 for 9 or 10 years. It is argued that this witness was a supporter of respondent No. 1 and though he lived in Nawabganj, a corner of the town of Kanpur, he attested so many slips, the suggestion being that all these slips were collected and this witness was called by respondent No. 1 to attest them and that accounts for such larger number of attestations.

70. The next chart is of the ballot papers attestation of which was made by Sri R. P. Srivastava. This gentleman is Principal of P.P.N. Inter College and lives in the compound of that College. He has attested 291 slips. Respondent No. 1 is President of the Committee of the Management of this College and that is the reason why he has attested so many slips.

71. Another chart is of the slips attested by Sri Jai Kishen, Principal, Harsahai Jagdamba Sahai College, Seesa Mau. He has attested 155 slips. It appears that there are only 10 or 15 electors including Sri Jai Kishen in Seesa Mau but he has attested so many slips. It has come in evidence that Dr. Brijendra Swarup is a member of the Managing Committee of this institution, but respondent No. 1 says he takes no interest and never attends its meetings. There is evidence also that Sri Paripurna Nand Verma is also a member of the Managing Committee of this institution and it is said that this accounts for the attestation of so many electors by this gentleman.

72. The next chart is of Sri Ahmad Husain, Hony. Magistrate First class at Kanpur. He has attested 68 slips including that of respondent No. 1 himself. The slip of Sri Ahmad Husain is attested by Sri Jai Kishen. This witness is on friendly terms with respondent No. 1 though he does not like to admit it.

73. I shall now come to the chart of Miss Ghosh, Principal, Hari Kishen Girls Highre Secondary School. She lives near the house of respondent No. 1 and has attested 32 slips. There is evidence that respondent No. 1 was member of the Managing Committee of this institution for 3 or 4 years. One thing very significant in this list is that though she is a lady living in the Civil Lines she has attested the attestation slips of large number of persons living in different parts of the city of Kanpur and has attested them on personal knowledge. These electors are of Seesa Mau, Nawabganj, Souterganj, Kalpi Road etc. and it is surprising how she could know all these electors personally. The attestation of such a large number of attestation slips by persons who are on friendly terms with respondent No. 1 or under his influence shows that ballot papers were collected and the respondent No. 1 got them attested by his men and it is argued that this is a circumstantial evidence to prove collection of ballot papers. I am prepared to accept this argument because there is no explanation forthcoming from respondent No. 1 how so many slips were attested by these persons who are under his influence. Respondent No. 1 only says that he does not know. I have no doubt in my mind that there is no other explanation possible except that these ballot papers were collected by respondent No. 1 and his workers and they were attested by his agents, workers and supporters. There are indications in some of the ballot papers to which our attention has been drawn which to my mind show that collection of ballot papers was made. Some of them are very significant and I shall only refer to some of such attestation slips.

(1) Sri Achuta Nand P.W.9 teacher, Gur Narain Khattri Inter College. The attestation is not by the Principal of his own College but by Sri Surendra Mohan Saxena.

(2) Sri Ajodhiya Nath Sharma, Professor S. D. College. His slip is attested by Surendra Mohan Saxena and not by his own Principal Sri L. C. Tandon.

(3) Sri Sheo Narain Verma P.W.4, of S. D. College. His slip is attested by Sri R. P. Srivastava, Principal P. P. N. College and not by the Principal of his own College.

(4) Sri M. M. Pandey, R.W.3, Lecturer in D.A.V. College. His slip is attested by Sri R. P. Srivastava of P. P. N. College and not by the Principal of his own College.

(5) There are two slips of Sri Virendra Vidyarthi. It appears that one of the slips bore No. 791 which was of Sri Krishen Kumar. It was cut out and No. 1976, which was of Sri Virendra Vidyarthi was put in. This Sri Virendra Vidyarthi voted twice and both the slips are attested by Sri R. P. Srivastava on the same day namely 16th April 1952. This in my opinion shows that slips were attested in heaps and the attesting officer did not examine and could not examine each slip and thus he attested both.

(6) The slip of Sri Rohatgi, learned counsel for respondent No. 1, was attested by Sri R. P. Srivastava. The slip of Sri Ahmad Husain Magistrate first class was attested by Sri Jai Kishen. The slip of Sri Surendra Mohan Saxena was attested by Sri R. P. Srivastava. Sri R. P. Srivastava's slip was attested by Sri Surendra Mohan Saxena. The slip of Sri Jai Kishen was attested by Sri R. P. Srivastava and so on. I have collected them at one place to show that these friendly attesting officers of respondent No. 1 were attesting slips of each other.

(7) The slip of Mr. Hoon Advocate was attested by Sri R. P. Srivastava though Mr. Hoon was an advocate of repute and was going to court every day for professional work.

(8) There is a slip of Srimati Kuldip Kuer. This is a curious slip. The signature of the elector is there, but there is no signature of any attesting officer, though there is a portion of rubber stamp showing that the attesting officer selected to attest this slip was Principal of Girls' Higher Secondary School. This could be possible only when the ballot papers were collected, brought in heaps for attestation and there was omission in this case of the signatures of the attesting officer though the slip was presented to the Principal of the Girls Higher Secondary School.

(9) I will now deal with the very significant slip of Gyanwati Verma. As the name shows she is a lady and the slip shows that it was signed in the presence of the attesting officer by somebody as Giyannath Verma and attested by Sri Jai Kishen of Har Sahai Jagdamba Sahai Higher Secondary School. This to my mind conclusively proves how these ballot papers were collected and attested by some persons who were on friendly terms or under the influence of respondent No. 1 and attested large number of ballot papers indiscriminately.

(10) I shall deal with but one more slip and finish with this part of the case. It is of Sri Sheo Narain Bhogliwal. His ballot paper is attested by Sri Surendra Mohan Saxena and the elector is identified by Sri R. P. Srivastava who are both attesting officers and it does not appear why Sri R. P. Srivastava himself did not attest and became only an identifier. The reason for this is that the seal of the Principal, D.P.S. Municipal Higher Secondary School Nawabganj had already been put on the slip and therefore it had to be attested by Sri Surendra Mohan Saxena. It is further worthy of note that at first Sri R. P. Srivastava had attested the slip but as I have said above as the seal of another school was there, Sri Surendra Mohan Saxena signs it as an attesting officer and Sri R. P. Srivastava is also shown as identifying this elector. This in my opinion is very significant and proves conclusively that ballot papers were collected and attested in heaps, otherwise this kind of mistake could not occur.

74. The attestation slips referred to above are only by way of samples. My learned colleagues have referred to other slips also. The point that I wish to make is that attestation of a large number of ballot papers by a few persons namely by Sri Surendra Mohan Saxena, Sri R. P. Srivastava, Sri Jai Kishen, Sri Ahmad Husain and Miss Ghosh, who were all under the influence of respondent No. 1 and the manner in which these slips were attested, clearly point to one and only one conclusion namely that the ballot papers were collected unattested and unmarked and were subsequently marked and attested by respondent No. 1 through a few selected attesting officers. It is said in argument that these attesting officers were perhaps negligent or careless. I am unable to accept this argument. If the rules had been followed, each ballot paper would have been presented by the voter to the attesting officer and he would attest in accordance with the rules

and the kind of mistakes that have crept in would not have been committed at all. Evidently the rules were disregarded and they were disregarded because of the influence of respondent No. 1.

75. There is one other factor which is also worthy of consideration in this connection. There is a chart on the record which is Ext. R7. A perusal of that chart shows that respondent No. 1 got 312900 votes as his first preference, (the number of votes multiplied by 100). The quota in this case was 246551. There was thus a surplus of 66349 votes. Out of this surplus 25368 votes went to Sri Virendra Swarup, 14868 went to Dr. Ishwari Pd. and lesser numbers to other candidates. This addition of 25368 votes to the votes secured by Sri Virendra Swarup shows that he secured as many as 25368 second preferences from his father's votes. This is the highest number of the second preferences and I conclude from this that as the ballot papers were collected by respondent No. 1, it was possible for him to give such a large number of second preferences to his son. There is another factor which has weighed with me in coming to the conclusion that ballot papers were collected in this case by respondent No. 1. Much emphasis has been laid at every stage of the case by the respondent's learned counsel that respondent No. 1 in his deposition has denied the facts alleged against him regarding the collection of ballot papers and other matters. It has been argued by the learned counsel for the petitioner, that this witness's denial merely is not enough. He further argues that this witness has made statements which take away considerably from the value of his evidence. It is said that respondent No. 1 stated that he had no worker in this election and he had to admit when confronted with a receipt for expenses incurred by Sri Shivakumar Lal at Allahabad that this money was paid to him for election work done there. It is argued that the explanation given by him is not credible and the fact is that he tried to suppress this fact from the Tribunal. Another argument is that the respondent No. 1 issued a manifesto which is Ext. P4 proved by respondent No. 1 on 19th October 1955. At first the respondent No. 1 denied all knowledge about the printing of Ext. P4 except that some of his supporters got it printed. He further said that he did not know whether it was printed in Kanpur or at some other place. The manifesto Ext. P4 did not bear the name of the press and it therefore became necessary for respondent No. 1 to give some explanation. It was for this reason that two days after on 21st October 1955 he said that Ext. P4 was only a proof which means that the press where it was printed sent it for correction before finally printing the manifesto. This explanation is on the face of it incorrect because the press will not send the proof to the petitioner who produced this Exhibit in court during cross-examination of respondent No. 1 Further this document does not look like a proof. When further pressed the respondent No. 1 had to admit that he got it printed himself in the Law Commercial Press and paid for it as will appear from his return of election expenses. It is argued by the learned counsel for the petitioner that these statements are not due to slip of memory but it is deliberate suppression of truth. There are other matters pressed but I need not deal with them in detail. I agree with the learned counsel of the petitioner that the denial by the respondent No. 1 of facts is not of any value and his attitude has been that of an ordinary party to a case who denies everything that is against his interest. I shall not therefore rely on the mere denial of respondent No. 1.

76. The petitioner has stated in his statement on oath that ballot papers collected by all the three returned candidates were delivered to the Returning Officer on 20th April 1952 in his presence. This part of his case has been attacked on the ground that in paragraph 13 of his petition the petitioner stated that a very substantial number of ballot papers was delivered to the Returning Officer by 3 or 4 agents of returned candidates who were neither duly authorised by the voters nor could they be deemed to be their duly authorised messengers as contemplated under the rules. This paragraph, I may note, has been deleted and has to be disregarded for the purposes of this case. It is argued however that this paragraph was verified by the petitioner partly on information and partly on legal advice and there is no mention of personal knowledge and therefore this evidence is not worthy of belief. When the petitioner was in the witness-box his attention was not drawn to the verification and he was not questioned why he omitted to say that it was from his personal knowledge that the returned candidates gave their ballot papers to the Returning Officer on 20th April 1952. It seems to me that in fairness to this witness this should have been done. The respondent No. 1 denies having gone to Lucknow on 20th April 1952 which was the last date fixed by the Returning Officer to deliver the ballot papers. The other two returned candidates who are respondents in this case have not come forward to deny that they did not go to Lucknow. I would not therefore discard the petitioner's evidence on this point. It is worthy of note that Mr. Govil who was the Returning Officer in this case has not been produced by any party. It is said that he is no longer in Government service. That is no reason why the respondent should not

have produced this witness. The petitioner could not produce him because his allegation is that this Returning Officer was on very friendly terms with respondent No. 1 who has been a member of the Legislative Council for a number of years and was an influencial person It is said that this witness did not maintain the register as regards the receipt of ballot papers received back from the electors through post or through their private messengers No such register has been produced and the petitioner's insinuation is that this register was done away with as otherwise it would have gone against respondent No. 1. Without that witness and without that register it is not possible to speculate but it seems to me that the only person who could have said definitely that the ballot papers were handed over to him has not come before the Tribunal. The petitioner in his statement says not only that he was present when ballot papers were delivered but that he made an objection to the Returning Officer whereupon the Returning Officer said that they were messengers delivering ballot papers. The respondent has produced one witness Sri Pachauri R.W.4 who takes it upon himself to prove how the ballot papers which were returned by the electors to the Returning Officer through messengers used to be received by Mr. Govil. This witness was Asstt. Superintendent, Legislative Council Office in 1952 and he says that these ballot papers sent through messengers mentioned above were received by an assistant of his office under his (witness's) supervision to be placed in a box kept for that purpose in the verandah of his office. This witness was asked if it was a fact "that Dr. Brijendra Swarup, Dr. Ishwari Pd. and Beni Pd. Tandon each brought large number of ballot papers to the office of the Returning Officer", and his answer was, *"I am not aware of it"*. This is very significant. He does not say that these respondents did not come at all. All that he says is that he is not aware of it. It is therefore possible that these persons may have come to Lucknow as alleged by the petitioner on the 20th April, 1952. I may note that this witness was not cross-examined because of the absence of the petitioner and his counsel.

77. The learned counsel for the petitioner has argued a point which is of great importance to him namely that the Hon'ble High Court by its order dated 27th September 1954 prevented the petitioner from proving facts which would bring his case within the provisions of Section 100(2) of the Representation of the People Act on the ground that the relief claimed by him was under Section 100(1) only. The result of this order has been that a large number of paragraphs have been disregarded which has injuriously affected the petitioner's case. The petitioner's learned counsel has argued that the reasonings of the learned Judges of the Hon'ble High Court are untenable in law in as much as their Lordships held that a petitioner has of necessity to choose one relief only under Section 84 of the Representation of the People Act. He has further argued that the reasoning of the learned Judges as regards interpretation of Rule 119 of the Representation of the People Rules was open to question. The learned Judges observed that when there are more returned candidates than one, the election petition can be filed within 60 days from the expiration of the time specified in Sub-rule 1 of Rule 112 for the lodging of the return of election expenses and as the present petition had been filed within 60 days and much beyond 14 days, he can ask for relief only under Section 100(1) claiming for a declaration that the election is "wholly void". The learned counsel for the petitioner has argued that the decision of the Hon'ble High Court both as regards relief that can be claimed as well as about interpretation of Rule 119(b) is not correct and requires reconsideration. This Tribunal had already discussed these points in this case (*vide* annexure 'B' of this judgment) and in another case reported in 3 E.L.R. page 397, Jwahir Shanker Pacholi *Vs.* Hirdaya Narain Singh and others, but the learned Judges have expressed opinion that our reasoning is incorrect. The learned counsel for the petitioner has argued that this error in the judgment of the High Court has crept in because his counsel in the High Court wrongly conceded that he was not able to support any of the findings on question of law recorded by the Tribunal. I shall not therefore deal with the argument by which the learned counsel has tried to show that the judgment of the Hon'ble High Court mentioned above was untenable in law and has very seriously prejudiced his case and a good deal of evidence which would have proved his case under Section 100(2) has been wrongly excluded. It is very delicate to discuss in this judgment the argument of the learned counsel for the petitioner challenging correctness of the view expressed by the learned Judges of the Hon'ble High Court. We are bound to follow that judgment and the direction given in that judgment has been followed. If the petitioner has any grievance, he is at liberty to move the Supreme Court and seek justice there. We must bow to the decision of the Hon'ble High Court as it is.

78. *Issues No.* 4 *and* 5.—My learned colleagues have decided these issues in this way They have held that this case is covered by Section 100(1) (c) and not by Section 100(2) (c) of the Representation of the People Act. They have further held that the nomination of Sri Virendra Swarup was improperly accepted. The

difference between us is in regard to the question whether the result of the election has been materially affected by this improper acceptance of the nomination of Sri Virendra Swarup.

79. My learned colleagues have relied on a ruling of the Supreme Court reported in A.I.R. 1954, Supreme Court, page 513 and they held that the principle laid down in that case applies in this case also. On the face of it, it does apply. The learned counsel for the petitioner has however argued that that ruling is distinguishable and should not be applied in this case. He distinguishes that case on the following grounds:—

1. That the case considered by the Supreme Court and those considered by various Election Tribunals on this question were all cases of ordinary general election where votes are cast for different candidates and it is possible by arithmetical calculation to find out the number of votes secured by each and to come to the conclusion whether the result of the election has been materially affected by the improper acceptance of any nomination. The present case is one of a single transferable votes where simple arithmetical calculation is not possible and it is always a question of complicated calculation.

2. Another reason given to distinguish that case is that in the case decided by the Supreme Court, the petitioners not only prayed that the election of the returned candidate be set aside but the prayer was also that the candidate who came next in the list should be declared elected. That prayer made it necessary for the Court not only to set aside the election of the returned candidate but to decide whether the next candidate should be declared elected.

80. It is also argued that learned Judges of the Supreme Court have accepted a decision of an Election Tribunal reported in Gazette of India, Extraordinary, October 13, 1953 and have held that a distinction has to be made between an improper rejection and improper acceptance of nomination observing that while in the former case there is a presumption that the election had been materially affected, in the latter case the petitioner must prove by affirmative evidence, though it is difficult, that the result had been materially affected. The learned counsel for the petitioner argued that this principle of law is incorrect. On the interpretation put on Section 100(1) (c) of the Representation of the People Act, there is no warranty for making any distinction between the improper rejection and improper acceptance of nomination. There is no room for presumption on that interpretation and still in the case of an improper rejection this presumption has been made and it has been said that *the election had been materially affected.* In the latter case it has been held that the petitioner has to prove that the *result* of the election had been materially affected. I agree with this last contention that there is no reason to make any distinction. In the case of an improper rejection the petitioner has to prove that if the candidate whose nomination has been improperly rejected would have been successful and would have defeated the returned candidate. Further the Election Tribunal has said in the judgment quoted above that "there is a presumption that the election had been materially affected." They have not used the words 'result of the election has been materially affected.' The reason for this is that it is impossible to prove how the voters would have cast their votes in case that candidate had been in the field and they have relied on the presumption that the election had been materially affected by the absence of a candidate who should have been in the field. I would therefore prefer to apply this principle to the facts of the present case. As I have said above, it is an election by means of single transferable votes. There were three candidates to be elected and there were 11 candidates in all who fought the election. It has been argued that Sri B. L. Vaish was a candidate next after Sri Beni Pd. Tandon and it has to be proved that if the votes that were cast for Sri Virendra Swarup had gone to Sri B. L. Vaish, he would have secured more votes than Sri Beni Pd. Tandon and this he has failed to do. I look upon this as not a correct way of judging this case. I will not go into the complicated method of calculating votes in the case of single transferable votes and carefully worked out in Schedule 3 of the Representation of the People Act. Suffice it to say, that votes are not wasted but they are transferred from one candidate to the other according to the rules made under the Representation of the People Act. It is very difficult to prove with mathematical exactitude what would have happened if Sri Virendra Swarup had not been in the field. There is evidence that Sri B. L. Vaish was an Assistant Commissioner of Income Tax and was posted at Kanpur for some time. He was well known in that city and there is some evidence that he approached Dr. Brijendra Swarup and asked him to help him in getting second preference from those electors who voted for him. This assistance was refused. This candidate had influence in the town of Kanpur and if Sri Virendra Swarup had not been in the field, perhaps Dr. Brijendra Swarup would have helped him and he

would have got a large number of votes which went to Sri Virendra Swarup and a large number of second preferences which also went to Sri Virendra Swarup. It is worthy of note that the ultimate transfer of votes at the time of accounting, 30966 of Sri B. L. Vaish went to Sri Beni Pd. Tandon and thus his votes ultimately came to 232091 and he was elected. In this state of affairs I would hold that the election had been materially affected by the improper acceptance of the nomination of Sri Virendra Swarup and I would draw the presumption that the result of the election has been materially affected by his presence and the petitioner has fulfilled the condition of the burden of proof.

81. I have come to this conclusion with great hesitation but I have ventured this because I cannot think that the legislature in enacting Section 100(1) (c) imposed an impossible condition on the petitioner regarding the burden of proof. In my opinion therefore the nomination of Sri Virendra Swarup was improperly accepted and that the result of the election has been materially affected by that improper acceptance. I would therefore hold that the election in this case was wholly void.

82. *Issue No.* 7.—On the findings arrived at I would hold that the corrupt practice of undue influence extensively prevailed at this election and that by reason of it the election was not a free election and also that the nomination of Sri Virendra Swarup was improperly accepted which materially affected the result of the election and on these grounds I would hold that the election in question is wholly void. I shall, therefore, allow the petition with costs which I assess at Rs. 1000.

83. The learned counsel for the petitioner has argued that Dr. Brijendra Swarup is guilty of corrupt and illegal practices and is disqualified from membership according to the provisions of Section 140 of the Representation of the People Act. Besides the corrupt practice of undue influence mentioned above, it has been argued that Dr. Brijendra Swarup issued a manifesto Ext. P4 which did not bear the name of the press and it was an illegal practice as contemplated in Section 125(3) of the Representation of the People Act. This manifesto Ext. P4 was put to Dr. Brijendra Swarup in his cross-examination and he had ultimately to admit that this was the manifesto which he got printed at the Law Commercial Press, Kanpur. Ext. P4 does not bear the name of the Press. An explanation however has been given by the respondent that it is only a proof. I am unable to accept this explanation. It is a belated one and is wholly wrong in as much as the petitioner produced it from his custody. I have already dealt with this matter above and I need not develop it any further here. I have no doubt in my mind that this manifesto Ext. P4 was issued by respondent No. 1, that Ext. P4 is not "proof" as explained by respondent No. 1, that the appearance also of Ext. P4 does not support him and I have no doubt that this illegal practice has been committed by respondent No. 1.

84. There is another question which has been argued at length namely that Dr. Brijendra Swarup and his son Sri Virendra Swarup between themselves committed fraud on the Returning Officer and on the whole Electorate by representing that Sri Virendra Swarup was of age and thereby getting his nomination accepted by the Returning Officer. It is further argued that the electors in this constituency would not have voted for Sri Virendra Swarup and would have voted for other candidates and this conduct of respondent No. 1 and Sri Virendra Swarup amounted to a fraud on the Electorate. I need not go into detail of the evidence to prove fraud. Dr. Brijendra Swarup himself took the initiative and filed an application for correction of age and supported it by his own affidavit. He got the age corrected from 25th July, 1925 to 25th July 1921, thus raising the age by 4 years. This correction was made with a view to make Sri Virendra Swarup eligible to stand for the election. According to the original age Sri Virendra Swarup passed his Matriculation Examination at the age of 16 years, but according to the corrected age he would pass his Matriculation Examination at the age of 20 which is very unlikely in an educated family like that of respondent No. 1. For the purposes of this case, it has been conceded that the age of Sri Virendra Swarup was wrong. I may also refer to a document Ext. R6 which is a copy of the electoral roll filed by the respondent. It is worthy of note that in this certified copy in the margin, there is a certificate which is extra-ordinary. It says—"This is to certify that part 'A' was prepared in 1949". This entry is in different ink and is by a different person, who does not give his official designation. This was done with a view to raise the age of Sri Virendra Swarup in the Electoral Roll. I therefore come to the conclusion that respondent No. 1 and Sri Virendra Swarup played a fraud on the electors and induced them to vote for Sri Virendra Swarup in this election. It has been argued vehemently that this fraud amounts to undue influence on the Electorate and amounts to corrupt practice. In support of this contention, reference has been made to the case of Lyallpur and Jhang Constituency,

1938, reported in Sen and Pottdar, page 504 at page 521, which is part of Annexure 'A' of the judgment in that case on issue No. 1. That case fully supports the contention of the learned counsel for the petitioner. Reference has also been made to a case reported in Hammond Vol. I, page 6 *et seq*, a case reported in E.L.R. Vol. I, page 312, at page 319 to 321, where also it has been held that "though fraud is not expressly mentioned in Section 100 of the Representation of the People Act as a ground for declaring an election void, fraud is involved in many of the corrupt practices mentioned above in the Act and an election can therefore be set aside for fraud if the fraudulent act falls within one or other sub-clauses of sub-section 102 and also satisfies other requirements of the particular clause under which it falls." Lyallpur case was followed in this case. It is therefore argued by the learned counsel for the petitioner that if this fraud, which amounts to undue influence, be not sufficient to set aside the election of respondent No. 1, it is an offence under Section 140 of the Representation of the People Act and respondent No. 1 as well as Sri Virendra Swarup are disqualified from membership. I therefore make an order that Dr. Brijendra Swarup respondent No. 1 and Sri Virendra Swarup respondent No. 6 be disqualified from membership.

(Sd.) A. SANYAL,

Advocate Member.

The 10th December, 1955.

ORDER BY THE TRIBUNAL

85 There is a difference of opinion among the Members of the Tribunal as to the final order to be made in this case The Advocate Member is of the view that the corrupt practice of undue influence by collection of ballot papers extensively prevailed at the election and that the election was, therefore, not a free election and under Section 100(1) (a) of the Representation of the People Act, 1951 it should be declared to be wholly void and that because this corrupt practice was committed by Dr. Brijendra Swarup and others it entails a disqualification in respect of Dr. Brijendra Swarup under Section 140 of the Act; on the other hand, the Chairman and the Judicial Member are of the view that no such corrupt practice has been proved in this case and consequently the election is not liable to be declared void on any such ground. All the three Members are agreed that the nomination of Sri Virendra Swarup in this election was improperly accepted by the Returning Officer within the meaning of Section 100(1) (c) of the Act, but while the Advocate Member is of the view that this improper acceptance has materially affected the result of the election and consequently the election must be declared to be wholly void on this ground as well, the Chairman and the Judicial Member are of the view that no such material effect has been proved and consequently the election is not liable to be declared void on any such ground either. Further, the Advocate Member is of the view that by issuing the leaflet Ext. P4 without the name and address of the printer and publisher thereon Dr. Brijendra Swarup has committed the illegal practice defined in Section 123(3) which entails a disqualification under Section 140 of the Act; but the Chairman and the Judicial Member are of the view that no such illegal practice has been proved entailing any disqualification in respect of Dr. Brijendra Swarup. Lastly, the Advocate Member is of the view that by getting Sri Virendra Swarup fraudulently nominated in this election Dr. Brijendra Swarup and Sri Virendra Swarup committed the corrupt practice of undue influence within the meaning of Section 123(c) of the Act and as such this corrupt practice entails a disqualification in respect of them under Section 140 of the Act. However, the Chairman and the Judicial Member are of the view that no such corrupt practice entailing any disqualification has been made out. In view of his findings the Advocate Member is, therefore, for the allowing of the election petition with costs which he assesses at Rs. 1,000 and for declaring the election in question to be wholly void and for holding that the corrupt and illegal practices found by him entail a disqualification in respect of Dr Brijendra Swarup and Sri Virendra Swarup as indicated above; on the contrary the Chairman and the Judicial Member are for dismissing the petition with costs on parties and for holding that Dr. Brijendra Swarup or Sri Virendra Swarup are not proved to have committed any corrupt or illegal practice entailing any disqualification. Under Section 104 of the Representation of the People Act, 1951 the opinion of the majority must prevail and the election petition is, therefore, dismissed with costs on parties.

(Sd.) R. SERAN, *Chairman*

(Sd.) M. U. FARUQI, *Judicial Member.*

(Sd.) A. SANYAL, *Advocate Member.*

T

ANNEXURE 'A'

ELECTION PETITION No. 330 OF 1952

Sri Ratan Shukla *Vs.* Dr. Brijendra Swarup and 9 others.

ORDER

Sri Ratan Shukla, the petitioner, was a candidate who contested election to U.P. Legislative Council from the U.P. Graduates Constituency (West) along with ten others who have been impleaded as respondents.

Out of the ten respondents written statements have been filed by respondents Nos. 1 to 4 and 10. The rest did not put in their appearance.

The first three, who were the returned candidates, and the last, who was one of the defeated candidates, opposed the petition but the respondent No. 4, who was also one of the defeated candidates, supported it.

The main prayer of the petitioner is that the election should be declared wholly void. He does not claim, it may be noted, a seat for himself.

Out of the four respondents, who opposed the petition two *i.e.* respondents Nos. 1 and 10 raised the plea of non-joinder. They pleaded that Sheo Prasad, who had contested the election but was defeated, and Jwala Prasad and Mathura Prasad, who had withdrawn their candidature, were necessary parties under section 82 of the Representation of Peoples Act, 1951 (hereafter called the Act) but were not impleaded. This omission, according to them was fatal.

As regards Sheo Prasad, answer of the petitioner was that he was impleaded as respondent No. 7 but that by mistake the typist had typed Saraswati Pershad in place of Sheo Pershad. The petitioner gave an application for the correction of the typing mistake. The aforesaid respondents opposed this application on the ground that the correction sought for amounted to amendment of the petition, which, under the law, the Tribunal was not empowered to order.

As regards Jwala Pershad and Mathura Pershad, the petitioner admitted that they were nominated but that they had withdrawn from candidature according to law. He however added that they were not necessary parties who should be impleaded under section 82 of the Act.

On these pleadings three issues were framed and it was agreed that before framing other issues and before dealing with the petition on merits findings might be given on these preliminary points. The three issues are as follows:—

1. Whether Sri Jwala Pershad, Sri Mathura Pershad and Sri Sheo Pershad are necessary parties to this petition?

2. If so, whether the petition is maintainable in their absence?

3. Whether the name of Sri Sheo Pershad can now be substituted in place of respondent No. 7?

Parties adduced no oral evidence on these preliminary issues but arguments from both sides were heard at considerable length.

We propose first to take up the case of Sheo Pershad. Two points arise in this connection—first whether Sarswati Pershad has, in fact, been mistyped in place of Sheo Parshad. If the answer is in the affirmative, then, secondly, whether the Tribunal is not empowered to order correction of this clerical mistake

It was agreed that neither anyone of the name of Saraswati Parshad was proposed for nomination nor was any one of that name actually nominated for election to the aforesaid constituency. It is clear from the record that the petitioner summoned "Saraswati Prasad" giving the very same address as was admittedly the address of Sheo Parshad. There is no difference in parentage as well. From these facts it is quite manifest that "Saraswati Parshad" as respondent No. 7 is mistyped in the petition in place of Sheo Parshad. It is also clear that the petitioner intended to implead Sheo Prasad as respondent in the petition but that the typist through mistake typed the first part of the name wrongly.

There is no denying the fact that such a clerical mistake could be corrected by any court of law under its inherent powers. It does not require citation of authorities or citation of the provisions of the Civil Procedure Code to show that Court's powers of amendment are very wide as regards subject-matter and also as regards time. It was, however, contended that amendment of the

petition by the Tribunal was not permissible under the Act. It was argued that section 83(3) of the Act, while permitting amendment under certain restrictions, of the particulars of list accompanying the petition, did not mention amendment of the petition. Powers of the Tribunal about the application of the Provisions of the Civil Procedure Code given in section 92 of the Act were said to be exhaustive and it was contended that no more powers conferred on courts under the Civil Procedure Code could be exercised by the Tribunal, including of course, powers of amendment of the petition. We may at once say that we wholly disagree with this line of argument. We are definitely of opinion that the provisions of section 92 are not exhaustive. Had the Legislature so intended it would have added a prohibitory clause saying that no other powers given to courts under the Civil Procedure Code would be exercised by the Tribunal. In our view the only restriction placed by the Act is that given in sub-section (2) of section 90 of the Act. So when there is a conflict in the procedure laid down in the Civil Procedure Code and that laid down in the Act, or in the Rules made thereunder the latter shall prevail. Contention of the respondents' side was that sub-section (3) of section 83 of the Act provided for the amendment of the list but not of the petition. Hence, it was argued, necessary inference was that the Act prohibited amendment of the petition. In our view, however, no such inference can legitimately be drawn. We are definite that no prohibition about amendment of petition is contained either expressly or by necessary implication in the aforesaid provisions. If the argument of respondents' side were to be accepted the same will be in conflict with the well-known legal maxim that prohibition cannot be presumed. After due consideration of the relevant provisions we are definitely of opinion that it cannot be laid down as a general rule that contents of a petition cannot be amended by the Tribunal under any circumstance. There being no prohibition contained either in the Act or in the Rules, provisions of the Civil Procedure Code must apply and an amendment must be allowed even of the petition by the Tribunal if it is to be made to meet the ends of justice and fair trial. Of course to allow amendment or to reject it will always depend on the facts of each case. The present case is a good illustration in which it is found as a fact that "Sarswati" was typed by mistake in place of "Sheo". It would be simply ridiculous to argue that the Tribunal was powerless to order the correction sought for.

In this connection it would be interesting to note that different Tribunals while deciding the pre-1951 cases applied even such provisions of the Civil Procedure Code to the facts of the cases before them as were not specifically mentioned in the Election Act that was in force at that time.

Section 92 of the Act is a verbatim reproduction of section 5 of Part II of the Election offences and Inquiry Act (XXXIX of 1920). It is therefore clear that the law as to the applicability of the provisions of the Civil Procedure Code was the same in the past as it is at present. Inspite of that, as noted above, the TRIBUNALS, under the peculiar circumstances of the cases before them, had to fall back upon even such of the provisions of the Civil Procedure Code as were not specifically mentioned. Fact of the matter is that procedural law is only a means to do justice and to decide cases fairly and justly. It is not an end in itself. Numerous matters can arise in the course of trial of election cases in which courts of law have no alternative but to invoke inherent powers or to take the help of the provisions of the Civil Procedure Code.

We take the following cases from Sen and Poddar's Indian Election Cases, 1951, Edition:—

In case No. IV (page 15) it was held that power of reviewing its own order was inherent in the election tribunal and that such power was controlled by the limitations of Rule 1 of Order XLVII of the Civil Procedure Code.

In case No. XX (page 115) it was held that Order 17 Rule 3 of the Civil Procedure Code applied to a case of party's default to produce evidence on the date of hearing, after adjournment had been taken for the purpose.

In case No. XXXV (page 243) petitioner's counsel was examined under Order X of the Civil Procedure Code.

In case No. XLVIII (page 310) it was held that the petitioner's failure to furnish additional security as directed by the tribunal rendered the petition liable to dismissal and that in such cases, provisions of Rule 2 Order XXV and Rule 3, Order XVII of the Civil Procedure Code were applicable.

In case No. XCII (page 620) it was held that Order IX rule 8 Civil Procedure Code applied to the case of petitioner's absence at the hearing.

It is, therefore, clear that in the aforesaid cases the tribunals, inspite of the existence of provisions exactly the same as those given in section 92 of the Act, had to apply and did apply other provisions of the Civil Procedure Code.

As regards interpretation of section 92 of the Act, recently the Bareilly Tribunal in case of Election Petition No. 276 of 1952 (Dr. K. N. Cairola *Vs.* Sri Ganga Dhar Maithani and other) by its order, dated January 15, 1953, made on application No. 38B held that inspite of section 92 of the Act the Tribunals, being courts of law, were possessed of inherent powers to amend the petition.

In this connection a very important and instructive judgment of the Bombay High Court may be referred to. It is judgment in special civil application No. 2017 of 1952 (Election Petition), dated December 14, 1952, delivered by Chagla C. J. and Dixit J. Facts were that in an election case the Tribunal ordered amendment of the petition and the impleading of a withdrawn candidate as respondent who was not originally impleaded. Being dissatisfied with this order the respondent moved this writ petition before the High Court. The writ petition was dismissed. Their Lordships held that in proper cases the election tribunals were empowered to amend the petition. It was also held that section 92 was not exhaustive.

Therefore in view of what is discussed above, we have no hesitation in holding that in proper cases election petitions can be amended.

Further more, even if it be granted that section 83 made the election petitions unamendable by the Tribunals, it may be noted that the names of the respondents are incorporated in the petitions not because of any directions contained in section 83 but because of the provisions of section 82 which precedes section 83. Thus, it is clear that names of the respondents do not form part of the petition for the purposes of the application of section 83. It follows that if there is any mistake in the typing of the name of any respondent, it can be amended without infringing any of the directions or restrictions contained in section 83 of the Act.

Our conclusion, therefore, is that it was through clerical mistake that "Sarswati" was typed in place of "Sheo" in the name of respondent No. 7 given in the petition and that the Tribunal is perfectly competent to order correction of this clerical mistake. We shall pass orders accordingly on the amendment application given by the petitioner over-ruling the objection of respondents made against that application.

Next comes the question of non-joinder of Jwala Pershad and Mathura Pershad who were nominated but who withdrew from candidature within the time prescribed by law.

According to respondent—

All the candidates who were duly nominated at the election must be joined as respondents as laid down in section 82 of the Act. If any of the candidates duly nominated at the election is not impleaded, it amounts to breach of the provisions of section 82. Section 80 lays down:

> "No election shall be called in question except by an election petition presented in accordance with the provisions of this Part."

Sections 80 and 82 both are in part VI of the Act. If there is breach of the provisions of section 82, the petition must be deemed to have been presented not in accordance with the provisions of Part VI and, therefore, was liable to dismissal.

It was argued that "all the candidates only nominated at the election" occurring in section 82 included even those candidates who withdrew from contesting the election within the prescribed time such as Jwala Parshad, and Mathura Parshad of the present case. The phrase "duly nominated" has not been defined in the Act. To build arguments on the lines given above help was taken by the respondents' learned counsel of the Rules for the interpretation of the Act.

In clause (f) of sub-rule (1) of Rule 2 of the Representation of the People (conduct of elections and Election Petitions) Rules, 1951 (hereafter called the rules) a "validly nominated candidate" has been defined as—

> "a candidate who has been duly nominated and has not withdrawn his candidature in the manner and within the time specified in sub-section (1) of section 37 or in that sub-section read with sub-section (4) as the case may be."

It was argued that the candidates who were left in the field after withdrawal were validly nominated candidates, that 'duly nominated' was a general term as distinguished from 'validly nominated' which term applied to a particular class and that even the withdrawn candidates must be considered as duly nominated in the light of the above definition. Words used in section 82 were "duly nominated at the election". It was argued with the help of the definition cited above that it was incumbent on the part of the petitioner to implead even those who had withdrawn because they were duly nominated candidates inspite of withdrawal. As this was not done in case of Mathura Parshad and Jwala Parshad, the argument proceeded, the petition was not in accordance with the provisions of Part VI and, therefore, was liable to be dismissed as it was no petition within the meaning of section 80.

Contention of the petitioner's learned counsel was that the phrase 'all candidates duly nominated at the election' occurring in section 82 should be given ordinary plain meaning and that there being no ambiguity in the phrase and there being no difficulty in its interpretation it was not right to hunt out the rules for giving special meaning to the phrase. According to petitioner the phrase meant all those candidates who remained in the field to contest election and whose names were published in the Gazette under section 38 of the Act.

The point in controversy is, therefore, much narrowed down. It revolves round the interpretation of the phrase 'all the candidates who were duly nominated at the election' used in section 82.

It is a cardinal rule of construction of statutes in general that the intention of an enactment should be gathered from the language employed by it, and that where words used are clear and unambiguous, it is the duty of the court to give effect to them according to their plain meanings. Plain and ordinary meaning of 'duly nominated at the election' is properly nominated or nominated according to law for the purpose of contesting the election. There is no ambiguity whatsoever.

Some controversy raged, during arguments, on the meaning of words 'duly' and 'validly'. In fact the ordinary dictionary meaning of the two words is the same. One can be used for the other. In the well-known treaties on the law of election in Great Britain by Parkar (5th Edition) at page 141 marginal note is 'nominated means duly nominated' and in the body under this marginal note following passage occurs:—

> 'The returning officer must remember that nominated means validly nominated, and that no candidate should be declared elected, or allowed to go to the poll who is not validly nominated.

It is clear that the two aforesaid words are used to convey the very same meaning. If the Act itself is perused it would be found that the phrase 'validly' nominated' as such nowhere occurs in it. However word 'valid' is found used in section 33 conveying the same meaning as 'due'. Heading of that section is 'Presentation of nomination paper and requirement for valid nomination'. Here 'valid nomination means' due or proper nomination or nomination according to law or according to prescribed procedure. No special or technical meaning is given to this word. In the body of that section 'duly nominated' has been used at two places—once in sub-section (3) and again in the second proviso to that sub-section. At both these places the phrase is interchangeable with 'validly nominated'. It is, thus, quite manifest that the Act did not draw any distinction between the two words or phrases. Had the Legislature intended so, the two words or phrases would not have been used in the same section carrying exactly the same meaning.

If the Legislature would have intended to draw any distinction in the Act between the two phrases, it would have done so by giving definitions of each. The Act is not wanting in instances where some special meaning was given to any particular word.

There are four sections in the Act containing definitions, namely, sections 2, 9, 19 and 79. The definitions given in section 2 are for the whole Act while those in other sections are for that part of the Act in which any particular section occurs.

That for instance the word 'candidate'. It has been copiously used in the Act. It is used in the general and ordinary sense in the beginning of the Act. However, in a particular part of the Act the Legislature intended to give the word special meaning. Hence it defined the word in section 79 and laid down that the definition was for Parts VI to VIII of the Act.

Similarly if the Legislature had intended to give any special meaning to 'duly nominated at the election' it would have defined the phrase at the proper place just as it was done in case of the word 'candidate'.

Therefore in view of what is discussed above, our conclusion is that the Act does not make any distinction between the two phrases given above.

The phrase 'at the election' in section 82 was also subject of comment from both sides. Argument of one side was that use of this phrase was not indicative of any time or of any particular stage in the process of nomination. The other side laid emphasis on the preposition 'at' and also on the definite article 'the' and explained that 'at the election' meant 'for the purpose of contesting the election'. Looking to context in which the phrase is used, it is impossible to give it any meaning other than that given from the side of the petitioner. Every word or phrase used in an enactment is used for some purpose. No word or phrase can be said to be redundant. If the Legislature had intended that all the nominated candidates including the withdrawn ones should be impleaded as respondents it was wholly unnecessary to add words 'at the election'. This phrase was added with some purpose. It cannot be said to be superfluous. By using that phrase the Legislature intended that only those candidates should be impleaded as respondents who remained in the field for the purpose of contesting the election. In the view that we have taken we find support from the Bombay case cited above in which their Lordships remarked—

> "'At the election' emphasises the point of time when the election takes place. It emphasises the fact that you are a contestant at the election and that the voters have a right to vote for that candidate. It also emphasises the fact that the candidate has not withdrawn and has no right to withdraw and in law he must be considered to be a person who is contesting the election along with other candidates."

It is, therefore, clear that plain and ordinary meaning of the phrase in controversy is that only those candidates are to be impleaded as respondents who had actually contested the election.

The same result is reached in another way. As pointed out above the 'duly nominated candidate' has not been defined in the Act. Part V of the Act relates to 'Conduct of Elections'. The first chapter of this part relates to 'Nomination of candidates'. The chapter consists of sections 30 to 39. The whole procedure of the process of nomination is described in this chapter a perusal of which section by section will show that it is impossible to point out the stage at which a candidate could be called 'duly nominated at the election' except the stage of section 38. It is there that, after nomination, acceptance of nomination, scrutiny of nomination, deposit of security and withdrawal, some persons remain in the field whose names are published in the Gazette. They are the persons who are duly nominated candidates left for contesting the election. It is only the stage of publication of the names of those who finally emerged to contest the seat at the election where we can pause to find out that the nomination was complete in all respects. This stage is reached after elimination of the withdrawn candidates.

There is some difference in the old law on the point and the present law. Under the old law ordinarily only the returned candidates were to be impleaded as respondents but—

> "if a petitioner, in addition to calling in question "the election of the returned candidates, claims a declaration that he himself has been duly elected, he shall join as respondent to his petition all other candidates who were nominated at the election."

It is significant to note that word 'duly' was not used before 'nominated' as it is used in the Act. It appears that there was some controversy in the past on the question as to whether the withdrawn candidates should be impleaded as respondents. Different tribunals had to decide this point. In a number of cases (as for instance cases Nos. II, XXVII, LXI, LXVIII and C reported in Sen and Poddar) it was decided that withdrawn candidates should have been impleaded and their non-joinder was fatal. But the petition was in no case thrown out on that score. Only the relief of the petitioner claiming seat for himself was struck off. However, some of the tribunals held even in the past that the Non-joinder was not fatal even in case of prayer of the petitioner claiming seat for himself (as for instance cases Nos. CX and CXLI of Sen and Poddar). It appears that in order to set the controversy at rest word 'duly' was added before 'nominated' and the uniform procedure of impleading all those who remained in the field to contest the election was introduced whether the petitioner claimed or did not claim a seat for himself.

Apart from what is said above, if the matter is looked at from a practical point of view, it may be noted that in the case before us the petitioner does not claim a seat for himself. His only prayer is for the avoidance of the election. In such a case it is wholly unnecessary to implead the withdrawn candidates who left the field for good of their own choice, and whose position is no better than that of an ordinary voter.

Reference was made from the side of the respondent to the case (Pritam Singh *Vs.* Hon'ble Sri Charan Singh) recently decided by the Lucknow Tribunal. The judgment of that case is published in the U.P. Gazette Extraordinary, dated December 26, 1952, page 6 (Hindi Edition). In that case help of clause (f) of sub-rule (1) of Rule 2 of the Representation of the People (Conduct of Elections and Election Petitions) Rule 1951 was taken for finding out as to what the phrase 'duly nominated' meant. In the aforesaid clause 'validly nominated candidate' is defined as that duly nominated candidate who did not withdraw. It was inferred from this definition that 'duly nominated candidate' included even those candidates who had withdrawn. We may point out that the Act is to be interpreted independently of the Rules. Meaning of the disputed phrase in the Act is quite clear and unambiguous. This being so, it is not at all necessary to import in the Act, with the help of Rules, meaning which is different from the plain meaning of the phrase. It may also be noted that as pointed out above scheme of the Act shows that it defines certain words and phrases for only particular part of the Act. Definition given for one part cannot be utilised for the interpretation of that part for which the definition was not meant. The preamble of Rule 2 cited above is—"In these rules, unless the context otherwise requires....". It is clear that the definitions that follow this preamble are meant for the rules. The same cannot be utilised for the interpretation of the Act. Further, it appears from the judgment of the Lucknow case cited above that attention of the Tribunal was not drawn to the significance of words 'at the election' which qualify 'duly nominated' in section 82. One of the reasons given by the Tribunal for holding that even the withdrawn candidates were necessary parties was that the petitioner had applied for addition of their names among respondents and by doing so the petitioner accepted the view that even withdrawn candidates were necessary parties. In the case before us the petitioner did not make any such application and did not accept the contention that even the withdrawn candidates were necessary parties. Another reason which weighed with the Lucknow Tribunal was that a candidate might have withdrawn finding that the opponent wielded greater influence and was, therefore, likely to succeed. It was remarked that the Legislature made the withdrawn candidate a necessary party. But the scheme of the Act shows that a withdrawn candidate goes out of the picture after withdrawal. Such a candidate like others has, however, been given an opportunity of becoming a respondent if he so chooses under the provisions of sub-section (1) of section 90 of the Act. In this case this opportunity was not availed of by Mathura Parshad and Jwala Parshad. Moreover as pointed out above, the only prayer being of the avoidance of whole election it is immaterial whether withdrawn candidates have or have not been made parties. With great respect we are unable to accept the view taken by the Lucknow Tribunal.

Besides the case of the Bombay High Court cited above which was decided one day subsequent to the decision of the Lucknow Tribunal, other Tribunals have also come to the same conclusion to which we have arrived. One of such cases is cited in the judgment of the Lucknow Tribunal. We could not have the advantage of persuing judgment of that case. However we may refer to the order of the Allahabad Tribunal dated November 11, 1952, made in the case of Election Petition No. 316 of 1952 (Sri Salig Rama Jaiswal *Vs.* Sri S. K. Pande and others). In that case the Tribunal held that the withdrawn candidates were not at all necessary parties to an election petition and that the phrase 'all the candidates who were duly nominated at an election' occurring in section 82 referred only to those candidates who actually contested the election.

Therefore in view of what is said above our definite finding is that Jwala Parshad and Mathura Parshad being withdrawn candidates were not necessary parties within the meaning of section 82 of the Act. We hold accordingly and we reject the objection of the respondents which was to the effect that non-joinder of the aforesaid persons was fatal.

(SD.) D. N. ROY, *Chairman.*

Election Tribunal, Faizabad.

(SD.) A. SANYAL, *Member.*

(SD.) M. U. FARUQI, *Member.*

The 20th March, 1953.

ANNEXURE 'B'

ELECTION PETITION NO. 330 OF 1952

Sri Shri Ratan Shukla—*Petitioner.*

Versus

Dr. Brijendra Swaroop and others—*Respondents.*

ORDER

1. During the general election held in 1951-52 Sri Shri Ratan Shukla the petitioner along with the respondents 1 to 10 contested the election to the U.P. Legislative Council from the U.P. Graduates (West) constituency. This election was held in accordance with the single transferable vote system by postal ballot. It was a three-member constituency. After scrutiny of the ballot papers Dr. Brijendra Swaroop Advocate, Kanpur, Dr. Ishwari Prasad Professor, Allahabad University and Shri Beni Prasad of Allahabad were declared by the Returning Officer (Secretary of the U.P. Legislative Council) as duly elected as a result of counting held on April 21 to 23, 1952 and the Petitioner and Respondents 4 to 10 were thus defeated.

2. One of the defeated candidates Shri Ratan Shukla presented the election petition before the Election Commission on August 4, 1952. Written statements were filed by Respondents 1 to 4 and 10 alone. The rest remained absent. Of those who filed the written statements Respondent 1 was the last to file the same. He did so on December 19, 1952.

3. There is no specific provision in the Representation of the People Act 1951 (hereinafter called the Act) about the filing of written statements by the respondents and about the framing of issues. Sub-section (2) of Section 90 of the Act, however, makes the provisions of the Code of Civil Procedure applicable with some limitations. It is, therefore, clear that written statements are filed and issues are struck in an election case under the provisions of the said Code. In the cases governed by the C.P.C. issues are struck on the pleadings of the parties. If any addition in the pleadings becomes necessary subsequently, an application for amendment is made in which the reason of delay in seeking amendment at a later stage is set forth If the court is satisfied that the delay was due to good cause, it allows amendment and then issues are framed in the light of the amended pleadings.

4. After the filing of written statements in this case some preliminary points relating to non-joinder of necessary parties were raised and, after long arguments, were decided by the Tribunal on March 20, 1953. April 4, 1953 was fixed for framing of the issues.

5. On the last-mentioned date, before the striking of the issues, two applications were made by Respondent 1 which were opposed by the petitioner. Consequently the framing of issues was postponed till the decision of these applications. One of the two applications—relating to the applicability of Section 84 of the Act—was, in fact, an application for amendment of the written statement because the said application seeks addition of a new allegation in the pleadings. This application was a belated one and no reason is shown as to why it was being made so late. Ordinarily that application should have been rejected summarily because of absence of any explanation of delay. We, however, entertained that application for consideration because of the legal points raised therein. The other application of the same date was made with a view to point out indefinite and vague nature of the allegations made in the petition.

6. The first of the two applications is in respect of applicability of Section 84 read with Section 100 of the Act and the other in respect of Section 83. We propose to dispose of the two applications by this order. For the sake of brevity we would call the first application as 'Application about Section 84' and the other as 'Application about Section 83'. We first take up the first-mentioned application.

Application about Section 84

7. The argument of the Respondent's side is that Section 84 describes the relief that can be claimed by a petitioner. Sections 100 and 101 define grounds on which any particular relief is to be granted. According to Respondent, correct interpretation of Sections 100 and 101 is that a petitioner cannot be permitted to make allegations, raise issues and lead evidence on such of the grounds as are not covered by the particular relief that he has claimed in his petition in terms of Section 84. In this case the only relief that the Petitioner has claimed is that

the election should be declared wholly void. This relief is covered by clause (c) of Section 84. According to Respondent, the issues in this case should be framed and evidence should be permitted to be led in respect only of such grounds as are given in sub-section (1) of Section 100 for avoidance of the whole election. Or, in other words, according to Respondent the allegations contained in the petition relating to grounds given in sub-section (2) of section 100 should not form subject matter of issues and the Petitioner should not be permitted to lead evidence in respect of those grounds. The Respondent pleads that such of the grounds as are not covered by sub-section (1) of Section 100 should be struck off and disregarded.

8. For consideration of the point urged from the side of the Respondent a close examination of the provisions of the Act is necessary. Part VI of the Act deals with disputes regarding elections. Chapter II of the part deals with presentation of the election petition to the Election Commission. Section 80 of that Chapter lays down that no election shall be called in question except by an election petition presented in accordance with the provisions of Part VI of the Act. Section 81 prescribes the mode of presentation of the petition and lays down—

> 'an election petition calling in question any election may be presented on one or more of the grounds specified in sub-sections (1) and (2) of section 100 and section 101'.

It may be noted that this provision enjoins upon the petitioner that his allegations in the petition should be covered by the grounds given in Sections 100 and 101. If this is so, the petition will be deemed to be in order. If this is not so, consequences will be fatal as we shall presently show. It may also be noted that the provisions of Section 81 do not make any reference to the relief that may ultimately be claimed by a petitioner. By using words 'one or more of the grounds' in sub-section (1) of section 81 the scope is widened and the petitioner is given liberty to give as many grounds as he likes provided he remains within the limits prescribed in sub-sections (1) and (2) of section 100 and section 101. So far there is no mention of relief. It naturally follows that grounds of presentation of an election petition are not governed or controlled by the relief that may be claimed.

9. To proceed further with the examination of the provisions of the Act, Section 82 is about the parties to the petition and Section 83 describes how the allegations relating to one or more of the grounds specified in sub-sections (1) and (2) of Section 100 and Section 101 should be detailed in the petition. Again there is no mention of the relief. So far *i.e.* from Section 80 to Section 83 the provisions are mandatory and everywhere in these sections word 'shall' is repeatedly used. Then comes section 84 with the heading 'Relief that *may* be claimed by the petitioner'. It lays down.....

> 'A petitioner *may* claim any one of the following declarations:—
>
> (a) that the election of the returned candidate is void;
>
> (b) that the election of the returned candidate is void and that he himself or any other candidate has been duly elected;
>
> (c) that the election is wholly void.

It may be noted that unlike the previously noted sections, *i.e.* Sections 80 to 83, mandatory nature has been avoided in section 84. Use of the word 'may' in the heading as well as in the body of section 84 is not without significance. This provision is inclined more to elasticity than to rigidity which is evident in the immediately preceding sections noted above. This section is followed by section 85 which calls upon the Election Commission to dismiss a petition if the provisions of sections 81, 83 or 117 are found not complied with. Section 84 *i.e.* section for relief does not find any mention in this section. It necessarily means that if the relief sought in terms of Section 84 is not in conformity with the allegations made in the petition or even if no relief is sought at all, the Election Commission is not empowered to dismiss a petition on that ground under Section 83.

10. This brings us to Chapter III of Part VI, which is meant for trial of election petition. Section 86 deals with the appointment of Election Tribunal and lays down that if the petition is not dismissed under Section 85, the Election Commission shall appoint an Election Tribunal for the trial of *the petition* with petition The obvious answer is: the petition as described in section 81 and 83 in which election has been called in question on one or more of the grounds specified in sub-sections (1) and (2) of section 100 and section 101 and which has survived the axe of summary dismissal provided in section 85. Thus it is seen that even a

petition in which allegations are not in conformity with the relief sought or in which no relief is sought at all, by crossing all the hurdles mentioned above, reaches the Election Tribunal.

11. Further examination of the provisions of the Act shows that section 87 deals with connected petitions, section 88 with the place of trial and section 89 with the attendance of law officers—matters with which we are not concerned in this case. Section 90 deals with the procedure before the Tribunal. Sub-section (4) of this section confers the same powers of summary dismissal of petitions on the Tribunal as are given to the Election Commission with this difference that in case of the latter the provision is mandatory while in case of the former it is discretionary. Here again there is no mention either of relief or of Section 84. This means that if the grounds taken are not in conformity with the relief sought or even if no relief is sought at all neither the Election Commission nor the Election Tribunal can summarily dismiss the petition. The general principle is that what applies to whole should also apply to part. If some of the allegations are not in conformity with the relief sought, they cannot be struck off, scored out or disregarded. If they had become redundant because of non-conformity with the relief, the Act should have contained a provision directing that the same should be disregarded. A close examination of the provisions of law as discussed above shows that the Tribunal has no powers to disregard or score out any allegations merely on the grounds that the same are not in conformity with the relief sought. It necessarily follows that even those allegations must form part of the pleadings and must be made subject matter of issues that are to be framed in the case.

12. An ingenious argument was advanced from the side of Respondent by reading sections 84, 98, 100 and 101 of the Act together and by showing that there were certain specified grounds for each specified relief and that therefore only such of the allegations should be made subject matter of issues as are in conformity with the relief sought An examination of the provisions of the Act manifestly shows the hollowness of this argument.

13. Besides what is said above, it should be noted that the provisions of section 84 are not mandatory. As a matter of fact a close scrutiny will reveal that clauses (a) to (c) of section 84 are not and were not meant to be mutually exclusive. Supposing there is a single member constituency and the contest was between two candidates only. The defeated candidate presents election petition. In such a case there would be no difference at all if either relief (a) of section 84 is claimed or relief (c) is claimed. Similarly if there is a three member constituency, as in the present case, and election of all the three successful candidates is questioned, it is immaterial if relief (c) is claimed in preference to relief (a) or *vice versa*

14 If the argument advanced from the side of Respondent was accepted certain impossible situations would arise. Supposing the relief sought is in terms of clause (a) of Section 84 and allegation of improper rejection of nomination paper is made in the petition, then as the aforesaid allegation is covered by sub-section (1) of section 100, according to respondent, such an allegation could not be investigated. This, however, could not be intention of the legislature. The result of what is said above is that the relief in a petition does not control the allegations made therein Therefore, all the allegations that stand the check laid down in Sections 81 and 83 must be made subject matter of issues. It was also argued from the side of the Respondent that section 98, relating to the decision of the Tribunal, made it incumbent on the Tribunal to construe the provisions of law in the way suggested We, however, are not concerned with that point at present.

15. In this connection we may refer to a decision of the Allahabad High Court. A writ petition was moved in that court against the decision of an Election Tribunal. The High Court judgment is reported as 1953 A.L.J., 383 (Shri Sheo Kumar Pandey Vs. V G. Oak) At page 328 the Bench which decided that case remarked that the Representation of the People Act 1951 was not drafted artistically. With respect we agree with the aforesaid observation. We venture to suggest that no ground for any ambiguity would have remained if the grounds given in sub-section (1) of section 100 would have been included in sub-section (2) as well. The reason is obvious An examination of the provisions of the Act discussed above clearly shows that the Legislature did not intend to group the grounds for challenging an election in water tight compartments. Furthermore, the grounds for setting aside the whole election must apply also to a case where relief of setting the election of a returned is

16. From the side of Respondent reliance was placed on a decision of the Bhopal Tribunal—Bijay Singh Vs. Narbada Charan Lal published in the Gazette of India, Extraordinary, Part II Section 3, dated January 6, 1953. The decision of one Tribunal is not, however, binding on another Tribunal. It is the reasoning of a decision which can be adopted if the Tribunal before which that decision is produced finds itself in agreement with it. In the case cited above the election related to a single member Constituency. There were five candidates whose nomination papers were filed. Three of them including the petitioner of that case were eliminated as a result of scrutiny of nomination papers. The contest remained between the remaining two candidates including the respondent of that case who was declared elected. The petitioner claimed two reliefs—one in terms of clause (b) and the other, of clause (c) of Section 84 *i.e.* for declaration that the election of the returned candidate was void and the petitioner was duly elected and also that the whole election was void. The Tribunal's reading of Section 84 was that it was open to a petitioner to claim only one relief and hence it ordered by the petitioner to elect one out of the two reliefs claimed. The order by which this choice was given to the petitioner is not before us. Hence it is not possible for us to examine the reasons that led that Tribunal to that conclusion. Perhaps the order was a summary one *i.e.* it was passed without giving any reasons. Had reasons been given that order would have been published in the Gazette as an annexure to the main judgement. The petitioner of that case submitted to the order of the Tribunal and made his choice by sticking to the relief of avoidance of the whole election. The result was that on the petitioner's application the Tribunal scored out such of the allegations of the petition as were covered by the grounds given in sub-section (2) of Section 100 with respect we are unable to accept the view of that Tribunal. It was a summary order. The reasoning of that Tribunal is not before us. The petitioner gave in an accepted and acted upon that order. Therefore we see no reason to change our view which is based on a close examination of the provisions of law

17. On the other hand we may refer to a decision of the Faizabad Tribunal in Election Petition No. 272 of 1952—Hanuman Prasad Vs. Tara Chand published in the Gazette of U.P. Extraordinary, dated April 21, 1953. It would be making this order too long if we discuss facts of that case. We accept the view expressed at pages 7 to 10 of the majority judgment. That aspect of the question was not considered in the disentient judgment because of a different line of approach.

18. Before we close this part of the order we may answer a point raised by the Respondent about limitation. It was argued that taking advantage of the relief of avoidance of the whole election the petitioner took advantage of the longer period of limitation provided in clause (b) of rule 119 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951. Therefore, the argument proceeded, the petitioner should not be allowed to have a decision of the Tribunal on the allegations relating to the grounds specified in sub-section (2) of section 100 because limitation was provided for the same in clause (2) of the aforesaid rule. This argument is wholly untenable and does not at all find support from the language of the rule relied upon. For application of that rule in this case the number of returned candidates is the criterion. If there is only one returned candidate clause (a) will apply, and if the returned candidates number more than one, as in this case, clause (b) will apply In the present case there were three returned candidates and hence the petition was rightly presented within the longer period of limitation taking advantage of the provisions of clause (b) aforesaid.

Therefore, for the above reasons we rejected the application.

Application about Section 83

19. The Respondent has presented this application pointing out that some of the paragraphs of the petition are too vague and indefinite to form subject matter of issues and that the same should be scored out because of non-compliance of the provisions of section 83 of the Act. For consideration of this point again a close examination of the relevant provisions of the Act will be necessary. We propose to deal first with the interpretation of sections 81 and 83 of the Act. In doing so we shall define the general principles to be deduced therefrom and then we shall examine the petition paragraphwise and find out what allegations are vague and indefinite and should not be made subject matter of issues.

Section 81 provides that—

> 'an election petition calling in question any election may be presented on one or more of the grounds specified in sub-sections (1) and (2) of section 100 and section 101.

Sub-section (1) of section 100 is in respect of

(a) extensive prevalence of bribery and undue influence;

(b) Coercion and intimidation exercised by one group of persons on another, and

(c) improper acceptance or rejection of nomination

Sub-section (2) of the same section is in respect of

(a) Corrupt or illegal practice procuring or inducing the election of a returned candidate or materially affecting result of election:

(b) Corrupt practice specified in section 123 committed by a returned candidate or his agent, and

(c) (i) improper reception or refusal of a Vote,

(ii) reception of void vote, and

(iii) non-compliance of law or procedure

Only so much of the two sub-sections is quoted above as is relevant for the purposes of the present discussion

20. A close scrutiny will show that some of the grounds given in sub-sections (1) and (2) of section 100 are neither corrupt practices as defined in section 123 and 124 nor illegal practices as defined in section 125. These grounds are not given any general name in the Act but may for the sake of convenience be called irregularities. Improper acceptance or rejection of a nomination paper and non-compliance of relevant laws and rules are some of the irregularities which are not covered by sections 123 to 185 of the Act and as such cannot be called corrupt or illegal practices. Consideration of this point has become necessary because sometimes provisions of section 83 are so interpreted as to include even irregularities.

21. To elaborate the point provisions of Section 83 may be considered in some detail. This section is as follows:—

"Section 83. Contents of petition.—(1) An election petition shall contain a concise statement of the material facts on which the petitioner relies and shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure 1908 (Act V of 1908) for the verification of pleadings.

(2) The petition shall be accompanied by a list signed and verified in like manner setting forth full particulars of any corrupt or illegal practice which the petitioner alleges, including as full as statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of the commission of each such practice.

(3) The Tribunal may, upon such terms as to costs and otherwise as it may direct at any time, allow the particulars included in the said list to be amended or order such further and better particulars in regard to any matter referred to therein to be furnished as may in its opinion be necessary for the purpose of ensuring a fair and effectual trial of the petition".

22. If the provisions of section 81(1) and section 83(1) are read together it becomes clear that the 'concise statement of material facts on which the petitioner relies' must be in respect of 'one or more of the grounds specified in sub-sections (1) and (2) of section 100 and section 101.' Thus the 'material facts' may be in respect of corrupt or illegal practice or in respect of the grounds collectively called irregularities.

23. A restriction is placed under sub-section (2) of section 83 in respect of a corrupt or illegal practice details there of should be given in a separate list accompanying the petition. But no such restriction is enjoined in respect of irregularities. It follows that the provisions of sub-section (2) of section 83 will not be infringed if no separate list of particulars of irregularities is appended with the petition provided, of course, that the irregularities are given in the concise statement of the material facts embodied in the petition under sub-section (1) of section 83.

24. Thus it is clear that the material facts relating to irregularities are not governed by the provisions of sub-section (2) of section 83. During the course of arguments our attention was drawn to some of the decisions of the old and new election courts in which a contrary view was expressed but with respect we are unable to accept that view. We were also referred to a decision of the Faizabad Tribunal of which two of us were members. It is Election Petition No. 321 of 1952, Srimati Shanta Devi Vaidya Vs. Sri Bashir Husain Zaidi. That case is not yet finally decided but the order relied upon was made on January 17, 1953. In that case the point as to whether the allegation of irregularities were hit by the provisions of sub-section (2) of section 83 was not directly in issue. While dealing with the extent and scope of the provisions of that sub-section, in a passing way, irregularities were bracketted with corrupt and illegal practices. It was observed—

> "It is, therefore, incumbent upon a petitioner to state at the very outset the particulars on which his allegations are based. Consequently, it follows that if particulars are not at all given, those paragraphs in the petitioner or in the annexure which deal with corrupt or illegal practices or even with irregularities should be struck of"

but further on the above remark is modified thus—

> "The word 'particulars' in section 83(2) of the Representation of the People Act 1951 is no doubt restricted to 'corrupt or illegal practices'. Nevertheless if irregularities are alleged a concise statement of material facts as required by the rules should be furnished."

The latter passage is not at all in conflict with the view which we have taken in the present case. Bracketting of irregularities with corrupt and illegal practices in the former passage is due to the fact that that point was not directly in issue there. However, if the former passage is taken to be laying down that irregularities are also hit by the provisions of sub-section (2) of section 83, in view of what is said above the two of us who were parties to that decision find themselves unable to adhere to that view. The third member is also not prepared to accept that reasoning.

25. We, now, turn to the question of the extention to which the provisions of sub-section (2) of section 83 should operate when allegations of corrupt and illegal practices are contained in the concise statement of material facts given in the petition.

Sub-Section (2) of Section 83 is as follows:—

> "The petition shall be accompanied by a list signed and verified in like manner setting for the full particulars of any corrupt or illegal practice which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of the commission of each such practice."

We have underlined some of the words given above because the arguments were mainly centered on the interpretation thereof. According to the learned Counsel of Respondent, the words 'full particulars' should be given their literal meaning, that is to say, even if any small detail is left out, it should be held that the aforesaid provisions are infinged and therefore the particular allegation wanting in that small detail should be secored out. We are unable to accept this contention for the simple reason that it negatives the provisions of sub-section (3) of section 83. Insertion of this sub-section in the Act pre-supposes the possibility of the particulars not being full literally in some case. Inspite of the use of words 'full particulars' it remains to be decided by the Tribunal as to whether any omission in giving the 'full particulars' such as needed an amendment or supply of further and better particulars under sub-section (3) for the purpose of 'ensuring a fair and effectual trial of the petition.' Similarly use of the words 'as full a statement as possible' again raises a question of fact. The Tribunal has to decide with reference to facts of a particular case whether the statement is as full as possible under the circumstances

26. This brings us to the words 'including as full a statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practice .....' By specifically mentioning names of the parties, date and place in this passage the Legislature stressed the need of the furnishing of these details. If these details are wanting in any list of particulars the Tribunal is to disregard the particular allegation provided no help is possible under sub-section

(3) of section 83. In this connection the passage 'the names of parties who have committed such corrupt or illegal practice' was subject of much comment at the time of argument. According to the learned Counsel of the Respondent, this passage includes names even of those who were subjected to any corrupt or illegal practice first because the argument proceeded, 'parties' (in plural) included both sides and secondly because those who were subjected to any corrupt or illegal practice should be taken as abettrs and as such they would come within the scope of the words 'alleged to have committed'. Answer of the petitioner's side is that 'parties' by no stretch of reasoning, can include those who were subjected to a corrupt or illegal practice. According to the learned Counsel of the petitioner the word 'parties' is used in order to include the candidate and his agents and also the petitioner in cases in which, under section 101A, a respondent has made recriminating allegations against him. It was further contended that the argument about those who were subjected to a corrupt or illegal practice being abettors was fallacious on the face of it first because the analogy of criminal law does not apply, owing to the absence of criminal intention on the part of those who were subjected to a corrupt or illegal practice and secondly because word 'parties' is not used to include abettors as an abettor is manifestly different from the perpetrator of the crime. We accept the argument advanced from the side of the petitioner and our conclusion is that the phrase 'the names of the parties alleged to have committed such corrupt or illegal practice' does not include those who were subjecttd to that practice. Therefore, it cannot be held that if those who were subjected to a corrupt and illegal practice are not named in the list of particulars provisions of sub-section (2) of section 83 will be infringed. To illustrate the point, supposing there is an allegation that voters were carried in a vehicle supplied by a candidate, there will be no infringment of the directions contained in the phrase 'the names of the parties alleged to have committed such corrupt or illegal practice,' and on that account it will not be right to score out the allegation because of that omission. It is another matter that the Tribunal acting under the provisions of sub-section (3) may call upon a petitioner to give a list of such names.

27. The above discussion will show that, in our view, hard and fast rules generally applicable to every case cannot be laid down. Each case is to be decided on its own merits having regard to circumstances governing that particular case. The guiding principle, however, is that while calling for further and better particulars or allowing an amendment under sub-section (3) of section 83 regard should be had that no surprise is sprung on the respondent and that there is no chance of manufacturing false evidence by introducing any new instances not given in the list of particulars filed under sub-section (2) of section 83.

28. Provisions of law in the past were the same as are now contained in the Act. These provisions have been in the past and are a still subject matter of interpretation in the election cases. Good many decisions of the Election Commissioners of the past and of the Election Tribunals constituted under the present Act were cited before us. We do not desire to discuss all those cases in details. Some of the decisions went too far in narrowing down the provisions and limiting the scope thereof to such an extent as to make sub-section (3) of section 83 nugatory. Others went too far in the opposite direction. We, however, generally agree with the reasoning given and the interpretation placed upon the relevant provision in a decision of the Allahabad Tribunal in Election petition No. 243 of 1952—Shiva Das and others *vs.* Sheikh Mohd. Abdul Samad. The order to which we refer was made on applications 9C and 10C on November 21, 1952.

29. At the time of argument before us it was contended from the side of the Respondent that in order to find whether the allegations in the petition were vague and indefinite, we were to confine ourselves to the petition alone and we should not look to the written statement in order to see how any particular allegation of the petition was dealt with therein. We do not agree with this line of argument which is at divergence with the law of pleadings and with the procedure which must be followed at the time of the striking of the issues.

30. We, now, proceed to examine the petition paragraphwise with a view to find out what allegations are vague and indefinite and what are not so and also in order to find out if in any case further and better particulars are to be called for from the petitioner. It may be pointed out that in this case the main allegation of the petitioner is that Dr. Brijendra Swaroop and his relations, friends and associates prevailed upon the electors for one reason or the other to hand over the unmarked but signed ballot papers and attestation slips to their men who at Kanpur or Allahabad marked the ballot papers according to their own desire It be noticed that if any

detail is wanting in this case the same can be supplied without springing any surprise on the Respondent and without any possibility of connection of evidence because the ballot papers and attestation slips are all in sealed covers with the Returning Officer.

31. No objection is taken by the Respondent in respect of paragraphs 1 to 8 of the petition. Paragraphs 9 and 10 are obviously too vague, indefinite and general to be made subject matter of any separate issue. The allegations made in these paragraphs do not entitle the petitioner to produce evidence on points not already alleged in the petition. Issues will, however, be struck on these paragraphs only with reference to the relevant allegation in the petition.

32. Paragraphs 11 to 14 form one group in which it is alleged that the returned candidates obtained blank ballot papers and attestaion slips from electors and got them filled in and filed before the Returning Officer in infringment of provisions of law contained in the Rules framed under the Act. The allegations made in these paragraphs are such as require the striking of issues on the points involved. However, the petitioner shall be called upon to furnish the names and addresses of such of the electors as were, according to him, subjected to this corrupt practice. By doing so the petitioner will not be introducing any such material as may be said to have been connected for the purposes of the case because of the existence of the ballot papers and attestation slips which have been kept under sealed cover by the Returning Officer. In these paragraphs some irregularities have also been pointed out which will form subject matter of issues.

33. In paragraph 15 of the petition the allegation is that certain persons (named in the petition) who were interested in the success of Respondent 1 and who are alleged to be his agents exercised undue influence and threat on the electors and obtained unattested and unmarked ballot papers from them. Schedule I of the petition relates to this paragraph and in it names of the electors subjected to threat and undue influence are given. This paragraph along with Schedule I must remain and must be made subject matter of issues. So far as the persons named in paragraph 15 other then Dr. Brijendra Swaroop, Sri Devendra Swaroop and Principal Kalka Parshad (all named in the Schedule) are concerned the petitioner will furnish the names of the electors influenced by them after inspection of the ballot papers and attestation slips.

34. Paragraphs 16 and 17 of the petition are too vague and indefinite to be made subject matter of issues. The same shall be disregarded.

35. In paragraph 18 only the instance given therein shall form subject matter of issue. The passage in the beginning 'that malpractices.....Postal Department' shall be disregarded as being too vague and indefinite.

36. Paragraph 19 has enclosure A attached with it and allegations made therein are given briefly in the petition. An issue will be struck on the point alleged in this paragraph.

37. Paragraphs 20 to 26 relate to irregularities and non-observance of law and procedure etc. Issues shall be struck in respect of the allegations made therein.

38. In paragraph 27 the following shall not be considered:—

(a) 'and his agents',

(b) 'within his knowledge and with his connivance and with his active instigation',

(c) 'and his friends and agents' and

(d) 'These ballot papers ..... University'.

because of vagueness and indefiniteness.

39. In paragraph 28 allegation of undue influence has been made without giving the details and reference has been made to agents without naming them. These vague and indefinite portions must be disregarded because the allegation relates to corrupt practice and is hit by sub-section (2) of section 83 and the defeat cannot be removed by the application of the provisions of sub-section (3) of the aforesaid section. Therefore, the passage 'That Sri Beni Parshad Tandon....who form their clientele' in the beginning and words 'and his agents' at the end shall be disregarded 'Their' in the portion that remains shall be taken to refer to the electors working in the Allahabad Bank and its branches as also to electors who form clientele. This means that the evidence shall be confined only to the aforesaid persons.

40. As the irregularities mentioned in paragraphs 27 and 28 are wanting in particulars, the Petitioner shall, after inspection of the ballot papers and attestation slips, furnish the names and addresses of such persons whose unmarked and unattested ballot papers and attestation slips were obtained by Respondents 2 and 3 and were filed with the Returning Officer.

41. The result is that the application of the Respondent about section 83 is partly allowed and partly dismissed to the extent indicated above. The Petitioner shall furnish the details indicated above and if necessary he shall be permitted to make inspection of the records for the purpose of furnishing the details but no such details shall be acceptable as do not find mention in the Petition or its Annexures.

(Sd.) R. SARAN, *Chairman.*

(Sd.) M. U. FARUQI, *Member.*

(Sd.) A. SANYAL, *Member.*

The 30th September, 1953.

ANNEXURE 'C'

BEFORE THE ELECTION TRIBUNAL, LUCKNOW

Sri Shri Ratan Shukla—*Petitioner.*

Versus

Dr. Brijendra Swaroop and others—*Respondents.*

ORDER

In his election petition the prayer of the petitioner is that the election to the U.P. Legislative Council in the U.P. Graduates (West) Constituency be declared wholly void. Section 84 of the Representation of the People Act, 1951 lays down that the petitioner may claim any one of the following declarations:—

(a) that the election of the returned candidate is void;

(b) that the election of the returned candidate is void and that he himself or any other candidate has been duly elected;

(c) that the election is wholly void.

Thus Section 84 limits the petitioner to claim one declaration only and in the present case the petitioner claims the declaration (c) of this Section. **Section 100(1) of this Act sets forth the grounds on which the election may be** declared to be wholly void and Section 100 (2) the grounds on which the election of the returned candidate may be declared to be void and it need not be pointed out that each set of grounds is different from the other. However, in his election petition the petitioner took not only the grounds covered by Section 100(1) and pertinent to the relief claimed by him but also the grounds covered by Section 100(2) and not pertinent to this relief, and consequently on 4th April 1953, the Respondent No. 1 moved an application that the two sets of grounds taken in the petition be separated from each other and the trial and disposal of the petition be confined to the grounds covered by Section 100(1) only, and in this application he also specified the paras of the petition which according to him contained the other set of grounds only, these paragraphs being Nos. 10 to 14 and 18 to 26. About some allegations of the petition he contended also that they were vague and indefinits and on 4th April 1953 he made a separate application also on the point of vagueness and indefiniteness of these allegations. Both the applications were opposed by the petitioner and were disposed of by us by our order, dated 30th September 1953. However, we are not concerned now with the question of the vagueness and indefiniteness of any allegations of the petition, and our concern is only with the contention of the respondent that the two sets of grounds taken in the petition be separated from each other and the trial and disposal of the petition be confined to the grounds covered by Section 100(1) only. We did not accept this contention of the respondent and we stated our reasons therefor in our order, dated 30th September 1953.

Being dissatisfied with our order of 30th September 1953 the respondent No. 1 went up to the Hon'ble High Court by means of a writ petition and the High Court has by its order, dated 27th September 1954 been pleased to accept this contention of the respondent and to express its view that the trial of the petition should be confined to those allegations only that come within the purview of [illegible] 100(1) [illegible] to

the Tribunal shall now act according to the view of law enunciated by their Lordships of the High Court and consider whether the paragraphs objected to contain any grounds which are relevant to the relief claimed, and if so, confine itself only to such grounds and take evidence which might be relevant for the grant of the relief claimed in the petition. In the order of the High Court the serial numbers of these paragraphs of the election petition are given as 10 to 14 and 19 to 28.

After this order of the High Court and in pursuance of it the Respondent No. 1 made an application to the Tribunal on 11th November 1954 praying that effect be given to the order and directions of the High Court by deleting the paragraphs No. 10 to 14 and 18 to 28 of the election petition as well as its paragraphs No. 4 to 7 to which no objection had been taken by him so far whether in the Tribunal or in the High Court, and contending that in fact the only paragraphs of the petition relevant for the purposes of this case were Nos. 9 and 10. By our order dated 30th September 1953 we also directed the petitioner to give further and better particulars of his allegations contained in paras 15, 27 and 28 of the election petition after an inspection of the ballot papers and attestation slips and on the objection of the respondent we by our order dated 11th November 1953 laid down certain restrictions and limitations on this right of the petitioner to inspect the ballot papers; the inspection of the ballot papers has not been made so far because of the stay order of the High Court on the respondent's writ petition, although the attestation slips have been inspected. The High Court has not made any observations as to whether the inspection should be allowed or not, but in his application dated 11th November 1954 the respondent No. 1 has prayed also that the order for the inspection of the ballot papers and attestation slips should be recalled now. The respondent No. 1 has moved two other applications on 19th November 1954 and a third on 16th December 1954 in continuation of his application dated 11th November 1954. All these four applications are opposed on behalf of the petitioner and we have heard the learned counsel of the parties at length on the points taken in these applications.

We first take up the question of paras 4 to 7 of the petition in respect of which no objection was taken by the respondent in this Tribunal or in the High Court. These paras deal with the question of age of the respondent No. 6, Sri Virendra Swaroop, son of respondent No. 1, Dr. Brijendra Swaroop; Sri Virendra Swaroop was a candidate in this election and filed his nomination paper which was accepted by the Returning Officer; in these paras it is averred that he was not of the qualifying age of 30 years at the time of filing the nomination and so the acceptance of his nomination by the Returning Officer was improper and it materially affected the result of the election. The contention of the respondents so far was only that Sri Virendra Swaroop was not below the qualifying age, that the acceptance of his nomination by the Returning Officer was not, therefore, improper and that in any case it did not materially affect the result of the election. However, there has since been a ruling of the Supreme Court in the case Durga Shankar Mehta appellant Vs. Raghuraj Singh respondent and others reported on page 520 of A.I.R. 1954 S.C., in which it has been held that inspite of a want of qualification in a candidate the acceptance of his nomination by the Returning Officer will not always be an improper acceptance within the meaning of Section 100(1) (c) and that in some cases it may only amount to a non-compliance with the provisions of the Constitution within the meaning of Section 100(2) (c). The cotention of the respondent is that according to this ruling of the Supreme Court the acceptance of nomination in every such case shall be only a non-compliance with the provisions of the Constitution within the meaning of Section 100(2) (c), and even assuming that Sri Virendra Swaroop was not of the qualifying age the acceptance of his nomination was only such a non-compliance specially because no objection was taken to his nomination at the time of the scrutiny of the nominations; and if it was only a case of non-compliance with the provisions of the Constitution within the meaning of Seccion 100(2) (c) it can be no ground for declaring the election to be wholly void for which the grounds are set forth in Section 100(1) and so the order of the High Court on the writ petition bars any enquiry about it

On behalf of the petitioner it is conceded that there was no objection such as is contemplated under Section 36 as to the age of Sri Virendra Swaroop at the time of scrutiny of the nominations, but it is contended that in any case this want of qualification was apparent on the electoral roll itself and the Returning Officer was misled to overlook this defect and so in accordance with the view of their Lordships of the Supreme Court contained in the last

sub-para of para 8 of their judgment it was certainly a case of improper acceptance of the nomination and as such it comes within the purview of Section 100(1) (c). We ourselves have minutely gone through the judgment of the Supreme Court and we agree with the petitioner that in accordance with this judgment an acceptance of a nomination in spite of a want of qualification need not in every case be a non-compliance with the provisions of the Constitution and that in some cases, *inter alia* the cases of the want of qualification being apparent on the electoral roll itself, the acceptance may be improper within the meaning of Section 100(1) (c). However, we do not propose to determine just now as to whether in this case the want of qualification, if any, was apparent on the electoral roll itself as the determination of this question requires some evidence and we think it proper that this controversy should be made the subject matter of an issue and be decided along with the other matters in the case. Paras No. 4 to 7 of the election petition shall, therefore, stand.

Now we take the other paragraphs in question of the petition. In para 10 of the petition it is alleged that corrupt and illegal practices were resorted to by the returned candidates and their agents and supporters with their connivance and this materially affected the result of the election. The contention of the respondent before this Tribunal and in the High Court was that the allegations of this para were not pertinent to the relief claimed by the petitioner but later on in para 7 of his application, dated 11th November 1954, he has conceded that the allegations of this para are pertinent. In our view the correct position after the order of the High Court on the Writ petition is that those allegations are pertinent only in so far as the petitioner may succeed in bringing them within the ambit of Section 100(1) (a) by proving that the election has not been a free election by reasons that the corrupt practice of undue influence has extensively prevailed at the election. This para of the petition shall, therefore, stand but subject to our observations about it in our order dated 30th September 1953.

Paragraphs 11 to 14 of the petition do not contain allegations of any corrupt practice within the meaning of Section 100(1) (a) or (b) and as such they should in accordance with the order of the Hon'ble High Court be deemed to be not relevant to the relief claimed and should not be enquired into. The allegations in these paras mean only that the provisions of rules No. 66 and 67 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951 were not complied with in the matter of the recording of votes on the ballot papers, the attestation of voters' signatures on the ballot papers and the return of the ballot papers by the voters to the Returning Officer; they come, therefore, within the purview of Section 100(2) (c) only and must be left out of consideration for the purposes of this case. Similarly paragraphs No. 18 to 26 of the petition do not contain allegations of any corrupt practice within the meaning of Section 100(1) (a) or (b); the allegations of these paras amount only to non-compliance with the provisions of the election law or rules in the matter of sending of the ballot papers by the Returning Officer to the voters, the recording of votes and attestation on them and their return to the Returning Officer thereafter, as such the allegations of these paras amount only to mere irregularities covered by Section 100(2) (c) and should be left out of consideration.

Paragraphs 15, 27 and 28 of the petition contain allegations of undue influence said to have been exercised by and on behalf of the returned candidates, Dr. Brijendra Swaroop, Dr. Ishwari Prasad and Sri Beni Prasad Tandon, respondents No. 1 to 3, and although these allegations come within the ambit of Section 100(2) (b), yet in case the petitioner succeeds in proving that the alleged corrupt practice of undue influence extensively prevailed at the election within the meaning of Section 100(1) (a) or that the alleged undue influence amounted to coercion or intimidation within the meaning of Section 100(1) (b) and for that reason the election in question was not a free election, then these allegations would certainly come within the purview of Section 100(1) (a). As such these paras of the petition shall stand, but subject to our observations about them in our order dated 30th September 1953.

The respondent prays also that we should recall our order allowing the inspection of the ballot papers and attestation slips to the petitioner. This inspection has been permitted simply to enable the petitioner to give further and better particulars in respect of the allegations of paras 15, 27 and 28 of the election petition and in view of the fact that the Hon'ble High Court has not prohibited the inspection and that these paras of the petition are to stand we see no good ground to recall our order of inspection.

The petitioner has already inspected the attestation slips and he has now to inspect the ballot papers only. As a result of his inspection of attestation slips

he has submitted a list of about 1100 ballot papers which he wants to inspect and by our order dated 30th November 1953 we have directed that these ballot papers be separated out and their inspection be allowed to the petitioner. However, it appears that the list includes not only those ballot papers the inspection of which is necessary for the purpose of paras 15, 27 and 28 of the petition but also those the inspection of which is relevant for the purposes of paras 11, 12 and 13 only. By our order dated 30th September 1953 we allowed an inspection of only those ballot papers of which an inspection is necessary for the purposes of paras 15, 27 and 28 and not of any other ballot papers and this order of ours has not been varied by any subsequent order and consequently the inspection must and shall be confined to such ballot papers only, specially because we now propose to ignore paras 11, 12 and 13 of the petition as stated above. The result, therefore, is that before inspecting the ballot papers the petitioner must submit a list of the ballot papers of which an inspection is necessary for the purposes of paras 15, 27 and 28 only. He shall be called upon to submit this list at the earliest so that further proceedings may be taken in this case.

During the hearing of these applications of the respondent the petitioner has filed some documents and the respondent objects to their being received in evidence but in our view the objection is without any good ground. This is only the preliminary stage of the case and issues have not been struck so far, nor have the parties been called upon yet to produce their documentary evidence, and the respondent himself has filed some documents at this stage, and so there can be no objection to the filing of any documents by the petitioner. However, if the respondent satisfies us that any documents filed by the petitioner are not relevant for the purposes of this case they shall not be admitted in evidence.

(Sd.) R. SARAN, *Chairman.*

(Sd.) A. SANYAL, *Advocate Member.*

(Sd.) M. U. FARUQI, *Judicial Member.*

Dated 12*th January*, 1955.

[No. 19/330/52-Elec.III/14461.]

By Order,

P. S. SUBRAMANIAN, Secy.

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